

**METROPOLITAN AREA PLANNING COMMISSION**  
**MINUTES**

**February 24, 2000**

The regular meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission was held Thursday, February 24, 2000, at 12:00 p.m. in the Planning Department Conference Room, 10<sup>th</sup> Floor, City Hall, 455 North Main street, Wichita, Kansas. The following members were present: Frank Garofalo, Chair; James Barfield (late arrival); Chris Carraher; Bud Hentzen; Bill Johnson; Richard Lopez; Jerry Michaelis; John W. McKay, Jr.; Susan Osborne-Howes; George Platt (late arrival); Harold Warner; Ray Warren; and Deanna Wheeler (late arrival). Ron Marnell was not present. Staff members present were Marvin S. Krout, Secretary; Dale Miller, Assistant Secretary, Donna Goltry, Principal Planner, Neil Strahl, Senior Planner, Scott Knebel, Senior Planner, Lisa Verts, Senior Planner, Barry Carroll, Associate Planner and Karen Wolf, Recording Secretary.

1. **Public Agenda:** James Mendenhall to speak on building a new runway to promote economic development.

**GAROFALO** "We will call the meeting to order. The first item we have on the agenda is a public agenda item. Mr. Mendenhall."

**JAMES MENDENHALL** "I live in the 500 block on South Bluff. There is no particular timing to this appearance. This is part of a long going on process, but since you are deciding on the planning documents for the future growth, I felt that it was important that you know about this project and the chances that it may be successful.

Here is a map (indicating) and here is the explanation for this. Basically, it involves an industrial park, a new runway, and it will really benefit Wichita. It will bring on more than 1,000 jobs, it could attract some major companies and it could make Wichita a major distribution hub for the nation. I don't have any more to say. If you have any specific questions you have my phone number and I would encourage you to call me and I will explain the details of this. It is still early and somewhat speculative, so you might want to keep this somewhat private so it won't get out of hand with speculation."

**GAROFALO** "Mr. Mendenhall, you do have five minutes if you want to expand a little bit. What I would ask of you is if you could explain the map to us a little bit."

**MENDENHALL** "That would be fine. If you look on the map, the proposal involves a runway beginning at the end of the existing eastern runway, going southwest for four miles with a runway, a taxiway, which will be heavy duty in weight and with a required greater separation between the runway and the taxiway of the future.

At 135<sup>th</sup> Street, there will be a taxiway overpass, which will be smaller than the overpass of the runway and taxiway combined over Maize. At 135<sup>th</sup>, it will extend west and go to 167<sup>th</sup> Street West feasibly. At that point, it is possible to turn north and with the addition of a taxiway overpass over Kellogg, could extend all the way to 21<sup>st</sup> Street North. This would create a 30 to 35 square mile industrial park with related area to the south of MacArthur to the northwest of K-42 and to the east of either 167<sup>th</sup> or 183<sup>rd</sup>. That represents the flight path area and is also very important because if you are going to have night time cargo airplanes coming in, you need to preserve this area to avoid problems with noise pollution. That right now is keeping other cities from expanding their operations, including Memphis, where the hub of Federal Express is.

The area marked 'TP-4' and '1,2,3' represents a proposed theme park, an actual buffer for the housing on Kellogg between 119<sup>th</sup> and Maize. This would involve a theme park featuring and showcasing manufacturing rides on the square mile or two square miles along Kellogg. In 'TP-2' to the south, there would be a horse equestrian area for show horses, show cattle and for a new agricultural focus to the airport cargo hub. To the right of that, 'TP-3' would be general recreation—ballparks, trails, and those trails would extend up along the Cowskin Creek. I am proposing a trail along the Cowskin Creek on the east side that would be sufficient for golf carts. So the three golf courses could all be combined with off-the-road trails with the intention of bringing in a world-class golf tournament.

As you can see, between 119<sup>th</sup> and 135<sup>th</sup> the trails return back to the theme park, creating a circle of recreational trails. The object of having so many different recreational venues is a target of having a Paris-type air show come to Wichita. That is about as bold as any other part of this project, but it is not unreasonable for us to think like that. I think that would be a good long-term goal for the City.

The hanger and cargo hub between Maize and 135<sup>th</sup>, centered on 119<sup>th</sup> would be two miles wide. One hundred nineteenth Street would be closed and these would be the new hanger, warehouse and cargo areas, including service for the super jumbo jets. The aim of this is to become a cargo hub. I don't want it to become a traditional hub where we have a specific airline dominating, but rather be a class-type hub where we specifically deal with the jumbo and super jumbo airlines of all of the airline companies. By doing this, we will attract a great deal of trans-continental business, direct flights from Tokyo and Europe, and we will become a redistribution center because an east or west-coast flight could unload in Wichita for the opposite coast. It could reload onto regional airlines and the regional airlines could fly that freight directly to the direct cities on either coast. So we would re-distribute materials in two directions.

Basically nothing here is not admitted already. There is no brain surgery, it is all existing technology. It is just a matter of configuring it so that we can grow for the future fifty years. It will require a lot of the zoning issues because most of this land will have to be acquired through cooperative agreements and some of it through eminent domain right-of-way. I would ask, if nothing else, that the Planning Commission would consider how a public-private partnership might be put together and possibly a task force to examine how it would operate and what role you would play. That concludes my presentation unless you have specific questions. I am sure you have many."

**MCKAY** "My only question is has this been run by the Airport Authority Advisory Committee or anything?"

**KROUT** "James did make a presentation at the Airport Board before he came here. Maybe you could tell the Planning Commission what kind of reaction you got there."

**MENDENHALL** "Well, they dissolved the Board. I don't know if that means it was a success or not. No, this was probably their last item. They are now considering this and since they is now a City entity, it will be more complicated and there are a lot more people involved and issues involved. There is a lot of interest right now in financing this, but most of that comes from Japan and Germany. I think this should be Wichita owned and operated, and a lot of this should be built to lease. That is the warehouse of the future.

I anticipate three one million square feet distribution centers and hangers with 7 story tall doors and the ability to take a 300 foot wide airplane wing span. In the future, they will be bigger than that. That is all I can really tell you right now. But our biggest bonus is a chance that Boeing might put some of their production facilities here. Nowhere in the United States are there any airports able to handle the planes they are projecting to build; the 777 is coming in a million plus now and before long they will be way bigger than that.

Wheeler arrived at the meeting at 1:12 p.m.

The first customers, surprisingly or not, are not passengers, but cargo haulers. So everybody wants a big truck that will be able to fly point to point and maybe never see passengers. If we position ourselves for that big truck, we become an air cargo distribution center, capitalizing on our geography when there is every reason to believe that we will become what seems almost unfeasible, we will become a major, major hub in the United States air system. We will be a reliever for Denver, for St. Louis and Chicago. Last week, three of those airports were closed because of snow and we were in the 60s and clear. So we have a very good chance and opportunity for a major location here, but it is not easy to put together and like I said, I would like to request you to examine a public/private partnership and a potential task force to examine this. Other parts of the City will also examine it during their normal processes. I hope to come back to you later with some zoning issues. Right now, this is just awareness."

**KROUT** "Are there any marketing materials to talk about what the projection is for air freight? Thirty square miles, I am calculating, is about 200 million square feet of space that will be developed someday. Where is that market? Are there projections to talk about how the market is changing and how air freight is the core of this? Are there some industry papers that you have read that lead you to think that something of this size can really happen?"

**MENDENHALL** "Yes. Not only papers, but in studying the Denver airport and how they moved theirs along, studying that several airports now are looking for air freight and air cargo as their new salvation. The past president of the American Logistics Association in Chicago has explained how important we would be for a reliever for Denver. Airports right now, like Dallas, for example, they opened up reaching full capacity the day they opened. And there have been very few airports built. Yes, there are many projections that say that the Amazon.com companies, the Fed Ex's, the American Expresses are all going international in scope, and geography is still the great physical truth. Location is very important. All of these companies are trying to locate at airport sites because of the importance of night-time cargo distribution and air freight.

Yes, there are lots of papers stating that this is a very viable logistics undertaking, especially if you were to build new. One of the unique aspects of this project is the heavy-duty runway. You may see that mentioned several places. The FAA and Boeing are partners now to develop new specifications for heavy-duty runways. Maybe half of the runways in the United States are below par right now. That includes medium and large size, as is mentioned in here. The issue is that if we can build a heavy-duty runway for the million plus pound airplanes, which secretly also require greater separation between the runway and the taxiway, then we will be able to open up as a first demonstration runway using this new FAA specification for pavement. That means that we could likely qualify for grants to pay for the entire runway and while we are up and operating, other airports will have to actually dig up entire stretches of runway or taxiway to rebuild them. So while they are having down time, we will be up and running and in a 'just in time' environment. That is very, very important. You cannot afford to have downtime and yet other airports will have downtime. We will be able to plan around that down time. Does that answer your question good enough?"

**KROUT** "Yes."

Barfield arrived at 1:18 p.m.

**MENDENHALL** "I will have more information later. I am moving to the place where a feasibility study is conducted and I am very confident that that feasibility study will prove out all I am saying."

**GAROFALO** "Are there any other questions?"

Platt arrived at 1:20 p.m.

**JOHNSON** "In this conceptional drawing we have here, it shows a new runway that starts just west of Hoover and goes to 135<sup>th</sup> Street. "

**MENDENHALL** "Yes. From the end of the eastern runway, the south tip of the eastern runway."

**JOHNSON** "Okay. The only thing, and I think it is nice to think this way, but I guess I am curious as to how often a big plane could land on an east-west runway in Wichita?"

**MENDENHALL** "In Wichita?"

**JOHNSON** "With a cross-wind."

**MENDENHALL** "The cross-wind is not as important in the super jumbo jets. They can take a lot bigger cross-wind than the medium or small sized airplanes. We have not really had many significant days where we have had to close down the airport because of winds. While this is a cross-wind runway, the same identical type of structure exists in Kansas City, in Topeka and in at least three other smaller airports within the State of Kansas, so it is not a big issue to be a cross-wind runway. We still have the existing runways that can be used. Even if we were to say, close down 2 days out of 365, the amount of money that we would make by operating the other 363 would make it well worth the effort. I just don't think we are going to have to close down for wind."

**JOHNSON** "I was just curious at why it wasn't looked at to maybe going more north-south."

**MENDENHALL** "Well, we don't have an option of putting it anywhere else. There are some places, if you look at airport and think about other cities' airports, all of them are surrounded. This airport is completely surrounded except for one half mile section between the sensitive wetlands and K-42, which happens to go to the southwest. It is almost like a miracle that these elements would come together and allow us to penetrate that half-mile and continue it for the entire four miles. I did not set out to do a four-mile, that is just a Point A, Point B result. But with a four-mile runway, you have lots of advantages. When you land, you know how the flaps go down, the brakes down on and suddenly you are up like this in the seat? That is because the runway is too short and you have to stop. With our runway, we would not have that problem. We could offer increased safety in an enormous amount, but we can't really say we are safe because all airports are safe. We would normally be noticed as being a safe runway, extremely safe."

**JOHNSON** "Thank you."

**GAROFALO** "Are there any other questions or comments? Okay, thank you, Mr. Mendenhall."

-----

## **2. Review of MAPC annual report for 1999**

**KROUT** "Commissioners, we have provided this draft to the Chair, who reviewed it, and there are a couple of omissions and we need to make a change for Commissioner Barfield, but other than that, I think we can entertain any comments or questions. We need to try to get this to the City Manager's office by the first of March."

**GAROFALO** "Does anyone have any comments?"

**HENTZEN** "Mr. Chairman, I may be insignificant to this board, but my name is not on the report. But first of all, I want to object to some of the information you have included in there. I don't think it makes any difference how many people are black or Hispanic or this or that or the other thing. Maybe we should just include our religion, our height or our weight. I think it is a mistake. We are supposed to be thinking about planning and zoning items as citizens of this county. I also would like to ask for some clarification on the consecutive years served. I read the City Ordinance on the appointment of City appointees to this Commission and it clearly says eight consecutive years. The County, I don't think, has that resolution. At least I don't know that they do. But what I want to ask is does the City have a resolution that they are going to follow for appointments to this board, and if not, why not? I would like to have that clarified."

**GAROFALO** "Bud, do you mean in reference to the eight year?"

**GAROFALO** "I'm not sure. Do you know anything about that Marvin?"

**KROUT** "I know that the City Council Ordinance does contain that kind of language. I know there has been some discussion with regard to Susan's appointment and Richard's appointment. I can't answer directly how the City Council arrived at the decisions that they did. Joe Lang isn't able to be here this afternoon, so we could ask him to report to you about that at your next meeting. Is that the pleasure of the Commission?"

**GAROFALO** "To have Joe Lang talk about the City Ordinance regarding the appointments. As far as length and service. Bud was asking that question."

**MCKAY** "Isn't that just their policy? The City has one policy and the County has a different one."

**HENTZEN** "I'm sorry I didn't bring the resolution. I do have a copy of it. I am pretty sure I did not bring it, but it specifically says that. I will tell you what I think is happening. In the same resolution, it has a following paragraph somewhere in the resolution that says that the current members who are appointed may serve until their replacements are named. That appears to be what the people that have appointed Susan and Richard both have decided to do."

**KROUT** "I believe that is right."

**HENTZEN** "I am pretty sure that is right. But what I want to say is what is the Resolution for if they don't want to follow it and they just manipulate it?"

**KROUT** "We will pass that message on to the City Council through the minutes, and then we probably don't need to have Joe Lang respond."

**GAROFALO** "I guess we need to adjust this to include that."

**KROUT** "Yes, we will correct that."

**CARRAHER** "I would have to echo my colleague's sentiments in regards to the paragraph with regards to the race. I find it insignificant to anything that we do. I guess I kind of resent that I am assumed to be in one of these groups because I am not a white male, I am not an Hispanic male, I am not a black male, and the last time I checked, I am not a female.

But all joking aside, I really feel that this serves no purpose at all. It is what we bring a table on the inside that counts. I just don't feel that this adds anything of significance to the report. I would, quite frankly, like to have it taken out of the report."

**KROUT** "I believe it is a requirement. Barry, you put these together for years, isn't it part of the standard requirement that the Council has for all boards?"

**BARRY CARROLL** "I believe it is."

**KROUT** "We can pass on that you don't think we ought to have that requirement in the future, but I think they have required us to provide that information to them."

**CARRAHER** "Okay. Then I would have to ask that you would take me off of the white male list and put me down officially as mulatto. Seriously. I am quite serious. If we are going to have this labeling of people, at least let me have the dignity of having a choice."

**KROUT** "Sure. Is that the term that you want to use?"

**CARRAHER** "Exactly. That's M-U-L-A-T-T-O."

**KROUT** "Okay."

**CARRAHER** "Thank you."

**GAROFALO** "Are there any other comments or corrections?"

**BARFIELD** "The only other correction, sir, is that it states there that there, and it has already been brought to my attention that it has been corrected officially, but it says 11 members are white males and 1 Hispanic, so I guess I am white all of a sudden."

**GAROFALO** "We left James out altogether."

**MCKAY** "James, they have only had a year to put this together, what do you expect?"

**WHEELER** "I guess I am just curious, whose requirement is that? I thought it was inappropriate on applications and all of that for us to distinguish."

**KROUT** "I think the City Council was just looking to see what kind of demographics they have on all of their boards. They asked us for some demographic profiles of their City Council districts as they have been in the process of thinking about who to appoint to the new District Advisory Boards, and I think it just gives them information on whether or not all parts of the community are represented."

**CARRAHER** "You just stated that you believe that the City wants to know the demographics on the board, but my question still is raised, is that a rule?"

**KROUT** "Barry, do you know where the requirements come from? The old CPO office?"

**CARROLL** "It was an Administrative Regulation of the City. I would have to look under the specific regulations."

**KROUT** "If Barry has some time this afternoon, he can try to research that and we will get back to you with an answer on where exactly that requirement is. I think it is the City Manager's Administrative Regulation."

**CARRAHER** "I would say until such time that that point is proven, that we kind of hold that paragraph aside."

**KROUT** "Okay."

**GAROFALO** "Does anyone else want to comment on the report? I guess not. Why don't we just hold off until we hear back on this? Then we can take action one way or the other, make a change or whatever."

-----

### **3. Set date for next workshop on Comprehensive Plan**

**KROUT** "First of all, if you saw my note, you saw that Bill Johnson contacted me and suggested that it would be interesting and informative to have discussion about systems buildings. He offered to set up a MAPC workshop at the Mid-Continent Industrial park regarding building products, and I think he has an officer from the national organization who happens to be in at that time and make the time available to make a presentation and answer questions. I thought that since this issue about metal buildings comes up from time to time, I think it would be useful and interesting for us to take advantage of that offer and have that workshop. I think there are some other people, probably, in City Hall, the Preservation Board, for example who might benefit from that.

My original thought was that we could meet in the early afternoon, and I did check with some of the Planning Commissioners and early afternoon was not a good time, so the suggestion was later in the afternoon. That is why I identified the possibility of 3:30. The thought was to go on from there and talk about the Comprehensive Plan, and if the discussion got extended enough, then we could order pizza at the office there and continue on until we get to a stopping point. If you would still like to do that, I think we could. I haven't had a change to talk to you yet about the Comprehensive Plan and the discussions with the City Council and County Commission, but they have both indicated an interest in this idea of an advisory committee to further discuss the Comprehensive Plan. But whatever they decide or whatever you decide in that regard, I think it would be useful for you to have at least one more workshop and try to iron out some of these issues. I think it is useful for people in the community to know, for instance, that you have already taken rental inspection off of the table as an issue. So whatever we do in the future, we probably won't have to have focus on that discussion of rental inspection programs.

I think that there are probably some other areas where it would be worthwhile to have a workshop and go through some other lingering issues. I know Commissioner Hentzen had some that he wanted to try to bring this to a decision point, and there are probably some others. So it is my suggestion that you go ahead and have that Tuesday late afternoon/early evening workshop to talk about metal buildings and the Comprehensive Plan."

**PLATT** "If we do this, would it be necessary then, every time we get a zoning case involving a metal building, to say that we have been lobbied about it?"

**KROUT** "No."

**GAROFALO** "What about the Tuesday session?"

Discussion here by most of the Commissioners.

**WARREN** "Where are you suggesting that be?"

**KROUT** "Next Tuesday afternoon."

**JOHNSON** "There will also be an architect that is going to make a presentation. A local architect that has designed a lot of structures all over the United States. He is going to be out of town Monday but will be available Tuesday."

**KROUT** "I think when he is in we ought to take advantage of it. Whoever can make it, can make it."

**JOHNSON** "And there could be some video things or stuff that they are supposed to bring that they could possibly leave, if somebody wants to look at it later."

**WARREN** "Mr. Chair, I think that since these are two such distinctive separate issues that they ought to be separated. I don't know that combining those two things are in the best interest of either one of them."

**GAROFALO** "I guess the thought was to avoid another meeting."

**WARREN** "I don't know that we want to be going into the night, though. We have pretty much tried to avoid those, too."

**KROUT** "Is that the consensus of the Commission? That you would just maybe take advantage of the metal building discussion and do that separately next Tuesday, whoever can make it?"

**GAROFALO** "We are talking about 3:30 and going into the evening. But that wouldn't be the case if we just heard the metal building discussion."

**MICHAELIS** "I think I would tend to agree with that, especially after the article in the paper this morning and realizing that we are nowhere close to being done with the Comprehensive Plan. I think we ought to just wait on that until we know what we are going to do."

**WARREN** "Me, too."

**GAROFALO** "On the Comp Plan. Then have a separate session on that?"

**MICHAELIS** "Yeah, and I don't think we ought to discuss that anymore until we know what we are doing."

**WARNER** "I have a question on the Comp Plan, too. Is it now our responsibility to come to a conclusion of this thing and then present it to a 30 member committee to review, change and then have it come back to us? Is that what is going to happen now?"

**GAROFALO** "I wasn't at the session that the City Council had, Marvin was. Maybe he can explain what they were saying."

**KROUT** "I think it is still being discussed. Both the City Council and the County Commission didn't have this as an action item. It was just a in a Council workshop, so they didn't take any action. But I think that the idea is to have a group; some of you were on the Planning Commission back in 1992-93 when we went through this process before and we had an advisory group that included the Advance Plans Committee of the Planning Commission plus a larger group. So the idea is not just sending it to some other group and then back to the Planning Commission, but the Planning Commissioners would be participating in a dialog with other citizens in an informal setting where issues could be discussed in more detail."

**MCKAY** "Then why did we spend three nights getting ridiculed and then do this? It is going to be the same situation. It is going to be loaded one way or the other."

**WARNER** "It will be the same people."

**MCKAY** "It is going to be the same people, the same people against, the same people for, the same controversy is going to be there."

**KROUT** "Well, John, you participated last time."

**MCKAY** "And it was an exercise in futility the first time. That's the reason why I really thought we were getting ahead this time because we had 400 people on the last committee. From one meeting to the next, the groups couldn't even agree. And Marvin, you know that as well as I do."

**KROUT** "All I know is that the committee came up with a recommendation. They brought it to the Planning Commission and the Planning Commission made relatively few changes. Then, after the homebuilders tried to rewrite the plan, we went back and made a few more changes and the City Council and County Commission approved it. I think that was...."

**MCKAY** "How long did that process take, Marvin?"

**KROUT** "It took quite a while."

**MCKAY** "Two and a half years. I got on the Planning Commission in 1991 and they had just started it. When did we finally approve it?"

**KROUT** "But that is partly because we started at the beginning the process of setting up that committee, as opposed to having a product to be able to review, which is where we are now. I guess I should say that if the Planning Commission has some opinions about this idea of an Advisory Committee, this is probably a good time for you to express those, and we will provide that information back to the City Council and the County Commission before they take any actions."

**GAROFALO** "We are not being asked to either agree or disagree, and I think we can, as a Commission, proceed however we want to proceed and ignore the other."

**OSBORNE-HOWES** "I just remember that for the 1993 plan, we did have that group and they did meet for a long period of time, because I remember being on the Advance Plans Committee and I was part of that. Really, we spent no longer on that we have spent on this one. This thing has been a two year process, too. But I do remember everyone reaching some kind of consensus at the end, and when it came to the Planning Commission as a whole, there was some discussion back and forth about it, but I think there was a unanimous vote on it. We had a public hearing, and if I remember it correctly, it was like no one came to the public hearing. There were one or two people who were basically saying it is a reasonable consensus, as opposed to the last group of three public hearings that we had that had, 700 to 800 people at it.

It just seems to me that we would have been better served to have had this advisory council. I have said that. I have gone on record a couple of times saying it. I guess my question is, and I wasn't there either: did the City say this or City/County? And are they saying that before they look at the plan they want to hear back, or are they considering hearing back from this advisory committee before they proceed?"

**KROUT** "That is what they are considering, and both the City Council and the County Commission talked about it Tuesday, but they haven't made any decisions about it or about exactly how it will be structured, or how much time it would take. That was a concern to at least one Commissioner."

**OSBORNE-HOWES** "There must be some feeling like 'let's just and get it over with and send it to someone else'. But the plan itself, obviously there are still disagreement about it. We are basically handing something in that we haven't reached consensus on. Obviously, there is still disagreement about it. We are basically handing in something that we haven't reached consensus on and we are handing it to the elected officials.

We could say to them 'this is your baby now and you do what you want with it', but that puts them in a untenable situation. I guess I can understand wherever this idea came from about the Advisory Committee. Maybe it came from somebody who paid attention to how we did it the last time. That seemed to work. I don't know."

**WARREN** "Well, I have had a couple of calls from fellow Commissioners on this subject, and the conclusion is that somebody of authority doesn't like this document that is now in print. Had they been in favor, they would be before the City Council now and the County Commission. No doubt about it.

As far as what you said, Susan, that there is lack of consensus, I don't see that. I think there is consensus on this board. Now, it doesn't measure up to what some people here think it ought to be, that is true. But I am like John, I don't think listening to another 400 people, 30 people or 20 people is going to bring us any closer to consensus than we are right now. We can prolong the agony of this thing as long as we want to, but I don't think it is going to have any net effect to take this any longer and string it out. I don't think any new information is going to be surfacing that we haven't already heard many, many, many times before."

**HENTZEN** "Mr. Chair, over the past 6 months or so, we have spent a lot of time meeting, and not until this morning in the paper, did anybody ever say a word about an Advisory Council. I wish that we had been told that was what was going to happen. As I read the paper this morning, it was truly alarming. Two names were mentioned. I think Marvin Krout and Elizabeth Bishop were mentioned. I have heard what they think, and I don't need another 6 months to find out what they think. So, let's don't rush a vote, but I think we ought to say to the Commission, at a comfortable time, and that might be in four weeks, or six weeks or whatever, this is what we think is right. This is the consensus of the group. I don't mind, Susan, if they have to say 'they really put it on our backs', because they have the final decision. If they don't want it on their backs, they can relinquish the final decision."

**GAROFALO** "Are there any other comments at this point?"

**PLATT** "I don't think there is any question that the draft in front of us represents a consensus of the majority of members of this Commission. It seems to me that there is very little to be gained from sitting around waiting longer. I would think that the people who support this current draft ought to be proposing we adopt it and send it on. It seems to me that the majority has the responsibility to take some leadership here, and that it is not those of us who oppose the plan who have to take the leadership. I have heard nothing but talking about wanting to put it off: 'let's wait a few weeks'. Why wait?"

**WHEELER** "Well, I guess, just from where I sat, I attended the County workshop and during that workshop, they had requested to have some dialog with us, which I assumed at that time would be in the form of the workshop. In our last meeting, Marvin said he would get with them and schedule a workshop. And he was going to check with the City Council and see if they wanted to do the same workshop or two workshops. So I guess that is where I am coming from. I thought we were going to come here today and hear about scheduling a joint workshop or two separate workshops and have some dialog and then we would be in a position to schedule from there. Now, I had a rather hectic morning, so I actually haven't read the newspaper, nor do I always take everything in there as happening on this Planning Commission. I would hope everyone wouldn't. So I guess I am looking to Marvin to tell us where the heck we are."

**KROUT** "All I can tell you is that they did not take action, but I think that they it seemed favorable towards moving in this direction of further dialog with a larger task force or committee, rather than coming back to you and having the direct MAPC/governing body workshops that we talked about earlier."

**WHEELER** "So, at this point, they have formally told you that they do not want workshops with this Planning Commission?"

**KROUT** "No. They haven't said that, but they have kind of moved the discussion in another direction."

**WHEELER** "I guess I am curious. Have the City Council and County Commission received full documentation of the 14 stakeholder meetings and the much broader groups of things that have occurred over the past two years with this dialog?"

**KROUT** "Yes. I think even when we had orientation with the new City Council and County Commission members that we provided them with that information. They may not be able to find it in their offices, but we provided it."

**GAROFALO** "I might say, just for whatever it is worth, that I had a brief conversation with the Mayor about a week ago, and there is no question in my mind, and he left the impression with me that he thinks that some sort of a compromise needs to be worked out. What they came up with Tuesday may be what he is thinking about. I don't know. He didn't mention anything about a committee to me. But I only had about a 3 to 4 minute conversation with him."

**MICHAELIS** "I just want to make a comment that I really kind of agree with Deanna. I would like to see us set up a joint meeting. We did it once and we did it right here, and it seemed to work very well with the City Council and County Commission. If we can all set there across the room and look each other in the eye and say 'we need to do more work on this', then let's do more work on this. But just to do it to be doing it, I don't know if it is really the thing. I would like to have them sit down and tell us that they are satisfied with it and what they aren't satisfied with. I don't think that is too much to ask, because

we have spent a lot of time on this and we have put a lot of effort into it. If they aren't happy with it, then they need to tell us that."

**LOPEZ** "I have a question. Since Marvin made the statement that they moved the discussion away from the meeting with us in another direction, in one sense isn't that validating the fact that the Planning Commission's business is done on this then, and they will take it to another committee?"

**KROUT** "In laying out an option for an advisory committee, my suggestion was that it be a committee that includes the Advance Plans Committee like the last one that we had."

**WARNER** "Then it was your suggestion to the City Council that we have an advisory committee? It wasn't their thought?"

**KROUT** "Yes."

**WARNER** "That's what I thought."

**WARREN** "Mr. Chair, this suggestion that you thought you understood from the mayor, I think it is a little unfair to paint this thing with a big, broad brush and say 'we think there ought to be some moderation or some agreement in here. We are talking about 100 subjects. I want to know specifically where he thinks we ought to modify a position. Where specifically? And then we can get down and probably do it in a few minutes. This whole thing of saying this 100 points that we have been working on now for a year and a half that we ought to make some concessions, concessions where? What does he want us to concede?"

**GAROFALO** "I might mention that he also mentioned that he was upset about the criticisms that were cast upon some of us on the Planning Commission during the public hearings. I'll tell you what. If you want me to, I will be glad to go to him, and I would be glad to go to Commissioner Winters, and just ask them straightaway for meetings, if that is what we want. If not, we can proceed on our own as Commissioner Platt suggested."

**WARREN** "Commissioner Warner has made a point here. It may be that if this Commission is going to be heard, then we are going to have to have two representatives go to the City Council and to the County Commission, not only Marvin Krout, but somebody that brings what the majority of this Commission feels. I don't think that majority is being represented before either one of those groups at all."

**GAROFALO** "Okay. We can sell 3 or 4, or however many wants to go, and we will set up a meeting with them if that is the consensus of the majority opinion, then we will try to do that."

**WARREN** "I am with Commissioner Platt. I think we ought to set a date. I think we ought to take the leadership to do so, and I think we ought to get it out of here and submit it to those bodies, which will either reject it or approve it one way or the other."

**GAROFALO** "Well, then, if we go in that direction, we don't need meetings with them."

**WARREN** "I would like to see a straw vote from this group about that very subject. Are we ready to turn this thing loose and send it in, and maybe if they don't like it they can give it to another group to resolve?"

**GAROFALO** "Do you want to make that a motion?"

**WARREN** "I'd rather see a straw vote. I don't want to make a motion."

**WHEELER** "I would just like to verify whether the workshops with the governing bodies are viable or not. Those were verbalized, I was present when those were, and I guess I would not support advisory boards or other forms of things since they requested that, or at least the County did, until we have an official word from them of whether they want to do that. I don't mind moving forward, but if there are groups that have issues, we have heard thousands of issues, we have heard from thousands of people, and it was very unfortunate that through the process this community was divided and at times not fully informed on the ramifications of several scenarios. We spent tremendous staff time developing two scenarios that this Commission was not in total support of, but that is where we are. So, I think if we go forward, it behooves whoever gets involved to hear all of the education process that we went through, not just a summary report."

**MCKAY** "In reference to the workshop or meeting that was held Tuesday, I have talked to two to three of the County Commissioners that didn't even know that this recommendation was coming down until after the City Council had acted upon it. They were calling me, asking me if I knew what was going on, if we had recommended it from this group. I said I knew nothing about it."

My opinion is that if we go to a group, we are starting at ground zero again, and what will end up happening is that the people that know what is going on that have spent endless hours either working on it and trying to work on it and having within our group discussion, criticism of each other, but at least we came up with a document. It is very evident that Marvin doesn't like it. It is very evident that he wants his conservation plan and he is not going to settle for anything less. This is just a ploy to get what he wants. If that is the route that the City Council wants to go and hinder this City for growth, I hear constantly economic development, economical development, and I know of three major infill projects right now that are going to bring a lot of money into town, but nobody ever talks about that. I thought I would never sit here and say this, but I am saying it because I really feel that that is the whole thing. Until Marvin gets what he wants, this is going to be it."



**WARREN** "Mr. Chair, I know that Commissioner Marnell called you, because he told me he did. He called me and asked me to convey his sentiments on this, and one of them was that he felt very slighted that it hasn't been expressed fully that this is a compromise document. There have been a number of compromises in this document. It isn't what it is portrayed to be, all one way or all the other. That was his consensus. I'm sure he told you the same thing."

**GAROFALO** "Right. He also said that he was ready to move."

**HENTZEN** "Whatever we do, as we progress on this thing, if we can, let's keep our doors open to the City Council and the County Commission. Let's don't draw a line in the sand with those people. They are good people, and they are reasonable people. I would like to see us quit having meeting to where we are verbally abused for 9 hours in a row, but let's proceed with what the consensus of this board is and share it with them."

**BARFIELD** "I think, basically, we must realize that we are dealing with controversial issues and controversial topics. There is an elected body. There are going to be certain members of the City Council and probably the County Commission that are going to play politics with this until they can see which way the wind is blowing. The best move for us, I think, would be for us to set up a workshop with the City Council members. That way, we could do as Mr. Warren suggests, find out exactly what areas of this plan the City Council, the Mayor or the County Commission has problems with, and that would give us a direction as to which way to go."

**MOTION:** That the Planning Commission formally request a workshop with the City Council and the County Commission to discuss this sometime within the next three weeks.

**WHEELER** moved **MICHAELIS** seconded the motion.

**WARREN** "Well, in your opinion, Deanna, would that probably negate the appointment of this other committee until such time as we had the opportunity to visit with them."

**WHEELER** "I don't know anything about this other committee until someone officially tells me about it. My suggestion is that we have either those individual workshops or joint workshops. It really doesn't matter to me."

**WARREN** "I guess I am wondering how this other committee is going to fit in. Who is going to appoint it?"

**WHEELER** "If they decide to appoint some advisory or another task force or something else, I guess that is their choice."

**GAROFALO** "No matter what we do, they could go ahead and still do that. That is my opinion."

**OSBORNE-HOWES** "It sounds like a request for a meeting with the elected officials makes sense to me. I am really hoping...I know that we have listened to 3 hearings with a lot of people talking to us, and I just don't want us to disintegrate like what I am hearing. I understand that that is what is happening to us, but I think to point fingers and say that it is Marvin's fault that we have gotten this amount of comment and that elected officials are hearing some heat over it is really not fair and it doesn't speak well for us."

So I guess what I am asking is that we sort of move on in a more positive manner. I really enjoy serving with all of you. We disagree on some things. I just think we need to behave better. We all have to work with each other."

**GAROFALO** "Any other comments? We have a motion, does everyone understand the motion? It is to request meetings with the City Council and the County Commission."

**VOTE ON THE MOTION:** The motion carried with 13 votes in favor. No opposition.

**GAROFALO** "Okay, then we will make a formal request. Maybe by letter and I will sign it."

**KROUT** "And about the workshop next Tuesday."

**GAROFALO** "Oh, yeah. How many can make the meeting on Tuesday at 3:30? Everyone who can make it raise their hand. We have enough."

**KROUT** "We will send a notice out to you to tell you where it is located."

-----  
Item taken out of order:

#### **OFF-THE-AGENDA ITEM**

**GAROFALO** "We have a notice here on Z-3340, which is not actually on the agenda for today, but apparently at some point was supposed to be or going to be, but it has been deferred until the Thursday, March 16, 2000 meeting."

**KROUT** "It is a request for commercial zoning and a C.U.P. on large tracts of lands north of Kellogg between 143<sup>rd</sup> and 127<sup>th</sup> Street. If anyone didn't get the postponement notice, this is just to tell you that that case has been postponed until March 16."

-----

**FRANK GAROFALO**, Chair, read the following zoning procedural statement which is applicable to all City of Wichita zoning cases:

Before we begin the agenda, I would like to take this opportunity to welcome members of the public to this meeting of the Metropolitan Area Planning Commission. Copies of the agenda for today's meeting, the public hearing procedure, and copies of staff reports on zoning items are available at the table nearest to the audience.

The Commission's bylaws limit the applicant on a zoning or subdivision application and his or her representative(s) to a total of ten minutes of speaking time at the start of the hearing on that item, plus up to two minutes at the conclusion of that hearing. All other persons wishing to speak on agenda items are limited to five minutes per person. However, if they feel that it is needed and justified, the Commission may extend these times by a majority vote.

All speakers are requested to state your name and address for the record when beginning to speak. When you are done speaking, please write your name and address, and the case number, on the sheet provided at the table nearest to the audience. This will enable staff to notify you if there are any additional proceedings concerning that item. Please note that all written and visual materials you present to the Commission will be retained by the Secretary as part of the official record. If you are not speaking, but you wish to be notified about future proceedings on a particular case, please sign in on that same sheet.

The Planning Commission is interested in hearing the views of all persons who wish to express themselves on our agenda items. However, we ask all speakers to please be as concise as possible, and to please avoid long repetitions of facts or opinions which have already been stated.

For your information, the Wichita City Council has adopted a policy for all City zoning items, which is also available at the table with the other materials. They rely on the written record of the Planning Commission hearings and do not conduct their own additional public hearings on these items.

-----

4. Subdivision Committee items 4/1, 4/2, 4/3, 4/4, 4/5, 4/6, 4/8, 4/9, 4/11 and 4/12 were approved subject to the Subdivision Committee recommendations.

**MCKAY** moved, **LOPEZ** seconded the motion, and it carried unanimously.

- 4/1. **S/D 99-79** - Final Plat of NORTHRIDGE HEIGHTS ADDITION, located on the northwest corner of US 254 (61<sup>st</sup> Street North) and Rock Road.

- A. Since sanitary sewer is unavailable to serve this property, the applicant shall contact the Environmental Health Division of the Health Department to find out what tests may be necessary and what standards are to be met for approval of on-site sewerage facilities. A memorandum shall be obtained specifying approval. Standard soil testing is required.
- B. The site is currently served by a Rural Water District. The applicant shall contact the water district to determine the ability of this property being platted to connect to their water line and submit a letter from the water district regarding any requirements.
- C. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning department for recording.
- D. County Engineering needs to comment on the status of the applicant's drainage plan. The boundaries of the Floodway Reserves need to be revised. Drainage easements located at the northwest corner of Lot 2, Block A, and in Lots 7,8,9,10, Block A need to be denoted as Floodway Reserve easements. Minimum building pad should be referenced in the plat's text. The location and elevation of benchmarks are required.
- E. The MAPC certification shall be revised to reference "Northridge Heights".
- F. County Engineering should comment on the access controls. Complete access control has been dedicated along the site's frontage to K-254. One opening has been platted along Rock Road. The access controls are approved.
- G. The Applicant is reminded that a platting binder is required with the final plat. Approval of this plat will be subject to submittal of this binder and any relevant conditions found by such a review.
- H. The Applicant shall provide a guarantee for the installation of the interior streets. The streets shall be constructed to a 36-foot rock road suburban standard.
- I. County Fire needs to comment on the acceptability of the proposed street

names. The street names are acceptable.

- J. A contingent dedication of right-of-way should be platted for Chippewa extending to the west line of the plat to provide potential street connection to the adjoining unplatted property.

As requested, the right-of-way dedication has been platted.

- K. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- L. The applicant shall install or guarantee the installation of all utilities and facilities which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- M. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- N. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (phone 316-729-0102) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- O. The applicant is advised that various State and Federal requirements [specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147] for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- P. The owner of the subdivision should be aware of the fact that the development of any subdivision greater than five (5) acres in size may require an NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Further, on all construction sites, the City of Wichita requires that best management practices be used to reduce pollutant loadings in storm water runoffs.
- Q. Perimeter closure computations shall be submitted with the final plat tracing.
- R. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
- S. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property.
- T. The applicant is reminded that a disk shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in Release 13 version of AutoCAD. This will be used by the City and County GIS Department.

-----  
**4/2. S/D 98-102** - Revised Final Plat of WOODLAND GLEN ADDITION, located north, on the east side of Woodland Avenue.

- A. Municipal services are available to serve the site. City Engineering needs to indicate if any guarantees or easements are needed. No guarantees are required.
- B. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning department for recording.
- C. City Engineering needs to comment on the status of the applicant's drainage plan. The drainage plan is approved.
- D. This property is within a zone identified by the City Engineers' office as likely to have groundwater at some or all times within 10 feet of the ground surface elevation. Building with specially engineered foundations or with the lowest floor opening above groundwater is recommended, and owners seeking building permits on this property will be similarly advised. More detailed information on recorded groundwater elevations in the vicinity of this property is available in the City Engineers' office.
- E. The County Commissioner's signature block may be eliminated.
- F. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- G. The applicant shall install or guarantee the installation of all utilities and facilities which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire

protection shall be as per the direction and approval of the Chief of the Fire Department.)

- H. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- I. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (phone 316-729-0102) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- J. The applicant is advised that various State and Federal requirements [specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147] for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- K. The owner of the subdivision should be aware of the fact that the development of any subdivision greater than five (5) acres in size may require an NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Further, on all construction sites, the City of Wichita requires that best management practices be used to reduce pollutant loadings in storm water runoffs.
- L. Perimeter closure computations shall be submitted with the final plat tracing.
- M. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
- N. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property.
- O. The applicant is reminded that a disk shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in Release 13 version of AutoCAD. This will be used by the City and County GIS Department.

-----  
**4/3. S/D 99-61 - Final Plat of FIRST ADDITION TO BENTLEY FARMS, located on the southwest corner of 101<sup>st</sup> Street North and 103<sup>rd</sup> West.**

- A. Since neither municipal water nor sanitary sewer is available to serve this property, the applicant shall contact the Environmental Health Division of the Health Department to find out what tests may be necessary and what standards are to be met for approval of on-site sewerage facilities and water wells. A memorandum shall be obtained specifying approval. A restrictive covenant shall be provided restricting the location of the septic system on Lot 1, Block 2.
- B. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning department for recording.
- C. County Engineering needs to comment on the status of the applicant's drainage plan. The drainage plan should include calculations and contours, and denote elevation of existing drainage structures. The proposed drainage detention appears to have no flow outlets.
- D. County Engineering needs to comment on the access controls. Complete access control is required along 103<sup>rd</sup> St. West for Lot 5, Block 1 at the intersection. This lot may have one opening along 101<sup>st</sup> St. North to be located within the west 75 feet of the property. The final plat has denoted the requested access controls.
- E. County Fire needs to approve street names for the proposed interior streets. County Fire has approved the names Mariah (for the through street), Mariah Place for the loop street, and Chinook for the connection to the southwest. The final plat has denoted the requested street names.
- F. The Applicant shall provide a guarantee for the installation of the proposed interior streets to the suburban street standard.
- G. County Engineering needs to comment on the need for improvements to perimeter streets. No improvements are required.
- H. The instrument submitted establishing the Derby Oil pipeline appears to indicate that the pipeline is encumbering this plat. If so, it shall be shown and subject to the standard pipeline conditions.
- I. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- J. The applicant shall install or guarantee the installation of all utilities and facilities which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire

protection shall be as per the direction and approval of the Chief of the Fire Department.)

- K. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- L. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (phone 316-729-0102) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- M. The applicant is advised that various State and Federal requirements [specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147] for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- N. The owner of the subdivision should be aware of the fact that the development of any subdivision greater than five (5) acres in size may require an NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Further, on all construction sites, the City of Wichita requires that best management practices be used to reduce pollutant loadings in storm water runoffs.
- O. Perimeter closure computations shall be submitted with the final plat tracing.
- P. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
- Q. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property. Southwestern Bell and KGE have requested additional easements which have been denoted on the final plat.
- R. The applicant is reminded that a disk shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in Release 13 version of AutoCAD. This will be used by the City and County GIS Department.
- S. County Engineering has requested a 25 foot utility easement adjoining a 25 foot pedestrian easement at the southwestern line of the plat.  
  
The requested utility easement has been platted.

-----  
**4/4. S/D 99-90 - Final Plat of CHANG & ARENSBERG ADDITION, located south of Kellogg, east side of Hillside.**

- A. Existing sanitary sewer and municipal water are available to serve this site. City Engineering needs to indicate the need for any guarantees. No guarantees are required.
- B. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning department for recording.
- C. City Engineering needs to comment on the status of the applicant's drainage plan. The drainage plan is approved. Parking lot detention will be required as part of site development.
- D. In accordance with the zone change, a cross-lot circulation agreement is required with the adjoining property to the north.
- E. Traffic Engineering needs to comment on the access controls. In accordance with the zone change, the final plat has denoted complete access control along Hillside.
- F. It is requested that the final plat tracing reference tie points to a section corner.
- G. The Applicant is reminded that a platting binder is required with the final plat. Approval of this plat will be subject to submittal of this binder and any relevant conditions found by such a review.
- H. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- I. The applicant shall install or guarantee the installation of all utilities and facilities which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- J. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.

- K. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (phone 316-729-0102) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
  - L. The applicant is advised that various State and Federal requirements [specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147] for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
  - M. The owner of the subdivision should be aware of the fact that the development of any subdivision greater than five (5) acres in size may require an NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Further, on all construction sites, the City of Wichita requires that best management practices be used to reduce pollutant loadings in storm water runoffs.
  - N. Perimeter closure computations shall be submitted with the final plat tracing.
  - O. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
  - P. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property. Southwestern Bell and KGE request additional easements which have been denoted on the final plat.
  - Q. The applicant is reminded that a disk shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in Release 13 version of AutoCAD. This will be used by the City and County GIS Department.
- 

**4/5. S/D 00-14 - One-Step Final Plat of FIVE STAR ADDITION, located on the north side of Central, East of Oliver.**

- A. Municipal services are available to serve the site. City Engineering needs to comment on the need for guarantees or easements. No guarantees are required.
- B. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning department for recording.
- C. City Engineering needs to comment on the status of the applicant's drainage plan. The drainage plan is approved. Improvements will be required at the time of site development.
- D. Traffic Engineering needs to comment on the access controls. The plat proposes three access openings along Central. The Conditional Use approval for the car wash (Lot 1) permitted two openings. Distances should be shown for all segments of access control. Traffic Engineering has approved three access openings.
- E. The Applicant shall guarantee the closure of any driveway openings being located in areas of complete access control or that exceed the number of allowed openings. A restrictive covenant shall be provided which permits the openings within Lot 2 to be retained until the site is developed with a nonresidential use, at which time one access opening shall be closed.
- F. The land being platted includes additional land that is not referenced in the legal description in the platting binder. The platting binder must include information on the entire property being platted.
- G. As required by the Sidewalk ordinance, a sidewalk shall be provided along Old Manor Road.
- H. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- I. The applicant shall install or guarantee the installation of all utilities and facilities which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- J. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- K. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (phone 316-729-0102) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- L. The applicant is advised that various State and Federal requirements [specifically but not limited to the Army Corps

of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147] for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.

- M. The owner of the subdivision should be aware of the fact that the development of any subdivision greater than five (5) acres in size may require an NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Further, on all construction sites, the City of Wichita requires that best management practices be used to reduce pollutant loadings in storm water runoffs.
- N. Perimeter closure computations shall be submitted with the final plat tracing.
- O. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
- P. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property.
- Q. The applicant is reminded that a disk shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD. This will be used by the City and County GIS Department.

-----  
**4/6. S/D 00-01 - One-step final Plat of LUDLUM 1<sup>ST</sup> ADDITION, located on the east side of 375<sup>th</sup> street West, North of 31<sup>st</sup> Street South.**

- A. Since neither municipal water nor sanitary sewer is available to serve this property, the applicant shall contact the Environmental Health Division of the Health Department to find out what tests may be necessary and what standards are to be met for approval of on-site sewerage facilities and water wells. A memorandum shall be obtained specifying approval. No Health Department approval is required per Item B.
- B. Sewer and water services will be provided from Cheney; and the Applicant shall submit a letter to that effect.
- C. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning department for recording.
- D. County Engineering needs to comment on the status of the applicant's drainage plan. The Floodway easement needs to be relabeled as a Floodway Reserve. The limits of the Floodway Reserve need to be labeled and dimensioned. The lowest floor or minimum building elevations need to be established as applicable. A HEC Quick-2 flood study run needs to be completed; which may require the revision of the floodway boundaries. A floodway reserve easement needs to be provided.
- E. The plat proposes one access opening per lot along 375<sup>th</sup> St. West. The plat's text shall reference "one opening per lot" and denote access controls as being dedicated to the appropriate governing body.
- F. Lot line dimensions need to be revised for the north and south lines of Lot 1 and along the southerly line of Lot 2.
- G. The owner's certificate shall reference the language "platted into lots" and include a signature line.
- H. The notary acknowledgment shall reference the owner's name.
- I. The Chairman of the County Commissioners needs to be revised to read "Thomas G. Winters".
- J. The sentence regarding easements in the County Commissioners' certificate needs to be eliminated.
- K. The language "at \_\_\_\_ a.m – p.m." needs to be added to the signature block of the Register of Deeds.
- L. The Applicant is reminded that a platting binder is required with the final plat. Approval of this plat will be subject to submittal of this binder and any relevant conditions found by such a review.
- M. The MAPC signature block should be revised to reference "Francis S. Garofalo" as the MAPC Chairman.
- N. The legal description needs to be revised to accurately portray the land being platted. The distances on the drawing need to correspond with those denoted within the legal description.
- O. The applicant shall install or guarantee the installation of all utilities and facilities which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- P. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.

- Q. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (phone 316-729-0102) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- R. The applicant is advised that various State and Federal requirements [specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147] for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- S. The owner of the subdivision should be aware of the fact that the development of any subdivision greater than five (5) acres in size may require an NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Further, on all construction sites, the City of Wichita requires that best management practices be used to reduce pollutant loadings in storm water runoffs.
- T. Perimeter closure computations shall be submitted with the final plat tracing.
- U. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
- V. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property.
- W. The applicant is reminded that a disk shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD. This will be used by the City and County GIS Department.

-----  
**4/8. S/D 00-18 - One-step Final Plat of ROONEYS' FIRST ADDITION, located west of Tyler Road, south of 87<sup>th</sup> Street South.**

- A. Since neither municipal water nor sanitary sewer is available to serve this property, the applicant shall contact the Environmental Health Division of the Health Department to find out what tests may be necessary and what standards are to be met for approval of on-site sewerage facilities and water wells. A memorandum shall be obtained specifying approval. The water well easement shall be increased per County Health Department regulations.
- B. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning department for recording.
- C. County Engineering needs to comment on the status of the applicant's drainage plan. The drainage plan is approved. A Floodway Reserve is required along the south lot line and on the east lot line.
- D. County Engineering and County Fire Department needs to comment on the access to this property. The plat proposes access through an existing 50-ft private street which currently serves three lots. The Subdivision regulations limit private streets to serving no more than three lots. Approval of the proposed plat would require a modification from the Subdivision regulations. An ingress/egress easement needs to be established by separate instrument which includes this lot. County Fire Department has approved the site for a 24' wide access road. The Subdivision Committee have the approved the access road for four total lots.
- E. The plat's text shall note the creation of the floodway reserve in addition to referencing the standard floodway language.
- F. For those reserves being platted for floodway purposes, the required covenant which provides for ownership and maintenance of the reserves shall grant, to the appropriate governing body, the authority to maintain the reserves in the event the owner fails to do so. The covenant shall provide for the cost of such maintenance to be charged back to the owner by the governing body.
- G. The Applicant is reminded that a platting binder is required with the final plat. Approval of this plat will be subject to submittal of this binder and any relevant conditions found by such a review.
- H. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- I. The applicant shall install or guarantee the installation of all utilities and facilities which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- J. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- K. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity



- to meet with the U.S. Postal Service Growth Management Coordinator (phone 316-729-0102) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- L. The applicant is advised that various State and Federal requirements [specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147] for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
  - M. The owner of the subdivision should be aware of the fact that the development of any subdivision greater than five (5) acres in size may require an NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Further, on all construction sites, the City of Wichita requires that best management practices be used to reduce pollutant loadings in storm water runoffs.
  - N. Perimeter closure computations shall be submitted with the final plat tracing.
  - O. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
  - P. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property.
  - Q. The applicant is reminded that a disk shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD. This will be used by the City and County GIS Department.

-----  
**4/9. S/D 00-19 - One-Step final plat of OGDON FIRST ADDITION, located north of 45<sup>th</sup> Street North, west side of Ridge.**

- A. Since neither municipal water nor sanitary sewer is available to serve this property, the applicant shall contact the Environmental Health Division of the Health Department to find out what tests may be necessary and what standards are to be met for approval of on-site sewerage facilities and water wells. A memorandum shall be obtained specifying approval. Standard soil testing is required. A topographical plan is requested.
- B. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning department for recording.
- C. County Engineering needs to comment on the status of the applicant's drainage plan. The plat needs to reference minimum building pads or lowest openings. The boundaries of the floodway reserve need to be revised to match the FEMA map.
- D. The location and elevation of benchmarks is required.
- E. The dimensions of the lots need to be corrected.
- F. This property is within a zone identified by the City Engineers' office as likely to have groundwater at some or all times within 10 feet of the ground surface elevation. Building with specially engineered foundations or with the lowest floor opening above groundwater is recommended, and owners seeking building permits on this property will be similarly advised. More detailed information on recorded groundwater elevations in the vicinity of this property is available in the City Engineers' office.
- G. County Engineering should comment on the need for additional right-of-way. The Applicant shall dedicate 20 feet of additional right-of-way.
- H. The site is located within three miles of Wichita and City Council approval is required. The appropriate signature block should be included on the final plat tracing.
- I. The plat's text shall note the creation of the floodway reserve in addition to referencing the standard floodway language.
- J. If platted, the building setback may be a minimum of 25 feet to conform with the SF-20 District zoning standards.
- K. The southeast tie point shall be revised to reference "1W".
- L. The northwest tie point shall be revised to reference the "SE ¼".
- M. The lot depth exceeds its width by a factor of more than 2.5, in violation of the Subdivision regulations. A modification has been approved by the Subdivision Committee.
- N. For those reserves being platted for floodway purposes, the required covenant which provides for ownership and maintenance of the reserves shall grant, to the appropriate governing body, the authority to maintain the reserves in the event the owner fails to do so. The covenant shall provide for the cost of such maintenance to be charged back

to the owner by the governing body.

- O. The platlor's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- P. The applicant shall install or guarantee the installation of all utilities and facilities which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- Q. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- R. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (phone 316-729-0102) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- S. The applicant is advised that various State and Federal requirements [specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147] for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- T. The owner of the subdivision should be aware of the fact that the development of any subdivision greater than five (5) acres in size may require an NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Further, on all construction sites, the City of Wichita requires that best management practices be used to reduce pollutant loadings in storm water runoffs.
- U. Perimeter closure computations shall be submitted with the final plat tracing.
- V. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
- W. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property.
- X. The applicant is reminded that a disk shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD. This will be used by the City and County GIS Department.

- 
- 4/11. D-1781** - Dedication of a Utility Easement from O.L. and Joan Eck, for property generally located south of Pawnee, on the east side of Meridian.

LEGAL DESCRIPTION: Ten (10) feet on either side of the following described centerline:

Commencing at the northeast corner of Lot 1, Meridian Center Addition to Wichita, Sedgwick County, Kansas; thence north 143.20 feet along the east line of said Lot 1, Block 1, First Addition to Southwest Village, Wichita, Sedgwick County, Kansas, to a point of beginning; thence S89° 59'04" W for a distance of 220.77 feet.

PURPOSE OF DEDICATION: As a requirement of a Lot Split (L/S-1013), this utility easement is being dedicated to allow construction and maintenance of public utilities.

Planning Staff recommends the granting of this dedication be accepted.

- 
- 4/12. D-1782** - Dedication of Street Right-of-Way from O.L. and Joan Eck, for property generally located south of Pawnee, on the east side of Meridian.

LEGAL DESCRIPTION: Commencing at the northwest corner of Lot 1, Meridian Center Addition to Wichita, Sedgwick County, Kansas; thence north 4.41 feet along the west line of Lot 1, Block 1, First Addition to Southwest Village, Wichita, Sedgwick County, Kansas; to a point of beginning; thence north a distance of 149.91 feet along the west line of said Lot 1, thence east a distance of 25 feet along the north line of Lot 1; thence south a distance of 50.06 feet parallel to the west line of Lot 1; thence 13° 59'09" W a distance of 103.07 feet to the point of beginning.

PURPOSE OF DEDICATION: As a requirement of a Lot Split (L/S-1013), City Engineering requested additional street right-of-way.

Planning Staff recommends the granting of this dedication be accepted.

-----

Item taken out of order:

- 4/7. S/D 00-16** - One-Step Final Plat of STONEBOROUGH 3<sup>RD</sup> ADDITION, located on the northwest corner of 55<sup>th</sup> Street South and Broadway.
- A. Existing municipal services are available to serve the site. City Engineering needs to comment on the need for guarantees or easements. A drainage guarantee is required.
  - B. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning department for recording.
  - C. City Engineering needs to comment on the status of the applicant's drainage plan. A drainage guarantee is required.
  - E. Traffic Engineering needs to comment on the access controls and the need for alignment of the opening on 55<sup>th</sup> St. South with the opening to the south. The plat proposes one access opening on Broadway along the north property line and one access opening on 55<sup>th</sup> St. South along the west property line. Distances shall be shown for all segments of access control. Traffic Engineering has approved the access controls.
  - E. This property is within a zone identified by the City Engineers' office as likely to have groundwater at some or all times within 10 feet of the ground surface elevation. Building with specially engineered foundations or with the lowest floor opening above groundwater is recommended, and owners seeking building permits on this property will be similarly advised. More detailed information on recorded groundwater elevations in the vicinity of this property is available in the City Engineers' office.
  - F. The Applicant is reminded that a platting binder is required with the final plat. Approval of this plat will be subject to submittal of this binder and any relevant conditions found by such a review.
  - G. If platted, the building setback may be a minimum of 20 feet, to conform with the GC District zoning requirement.
  - H. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
  - I. The applicant shall install or guarantee the installation of all utilities and facilities which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
  - J. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
  - K. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (phone 316-729-0102) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
  - L. The applicant is advised that various State and Federal requirements [specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147] for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
  - M. The owner of the subdivision should be aware of the fact that the development of any subdivision greater than five (5) acres in size may require an NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Further, on all construction sites, the City of Wichita requires that best management practices be used to reduce pollutant loadings in storm water runoffs.
  - N. Perimeter closure computations shall be submitted with the final plat tracing.
  - O. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
  - P. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property. Southwestern Bell requests additional easements.
  - Q. The applicant is reminded that a disk shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD. This will be used by the City and County GIS Department.

**GAROFALO** "My question is on Item D. That is why I pulled this one."

**NEIL STRAHL**, Planning staff "Item D regards the access to the site. The applicant proposed two openings, one opening along the north line of the site and one opening along the south line, along the western property line. Both of those openings were approved by Traffic Engineering."

**GAROFALO** "They were? Okay."

**KROUT** "Did the Subdivision Committee recommend the cross-lot access, and did the applicant accept that?"

**STRAHL** "No."

**KROUT** "Could you go into discussion? I'm sorry, I assumed that they had."

**STRAHL** "Staff had requested a cross-lot access agreement with properties to the north and west. As you can see by the zoning map, both of those properties, the surrounding area, are zoned 'GC' General Commercial. Staff had requested a cross-lot access agreement to minimize the openings along the perimeter streets and traffic conflicts. The applicant did plat the openings along the outer edges to allow for shared accesses.

Again, there would be an opening right here, an opening on the south portion of the site right here. So there would be an opportunity for joint access in the future, but the Subdivision Committee did not require a cross-lot access be provided at this time for future access."

**GAROFALO** "Okay. Any other questions on that one?"

**KROUT** "I guess for the record, the Subdivision Committee could explain their reasoning for it, since this is something that both in the Comprehensive Plan and in the Subdivision Regulations we are trying to encourage shared access and small lots to be able to be collected. Is that a railroad or drainage area over to the west?"

**STRAHL** "It is a drainage area to the west, yes."

**MCKAY** "I was under the impression on this one that at the time of the development, the applicant didn't oppose that because there was no future development at this point. They didn't want to do it at this point in time. But they wouldn't disagree to do it at time of development, isn't that right?"

**KROUT** "How do you accomplish it if you don't get the instrument at the time of platting?"

**MCKAY** "Could we hear from the applicant on this?"

**MARK SAVOY** "I am with Savoy, Ruggles and Bohm, representing the applicant. We placed the access control in position. We did that for two reasons. One to stay as far away from the intersection as possible, and the second was to leave the option open to possibly work with adjoiners.

The people that are trying to buy this property have an unusual parking layout, for starters. They have a drive-up window; this is a Walgreen's, so they have some traffic conflicts that they don't really like just throw into the wind to anybody that is next door to them. Since they don't even know who would be next door, they kind of hate to sign just an open agreement and preferred to have the option of letting someone come to them when there was a need for joint access. If it became necessary."

**WARREN** "Under your original proposal Mark, now what access were you asking for here? Can you show us up there?"

**SAVOY** "It is just exactly what Neil just stated. One opening at the north end of the property and one opening on the west end down here. If there are any of you that are familiar with this site, there is an open ditch along here that is being filled with a box structure and the driveway will go over that ditch, or over the box. You won't see a ditch in front of this property any longer."

**MICHAELIS** "Marvin, is this something that if we didn't require it on this plat but on the next one that comes in for the lot on the north, we require it there and they agree to it, isn't that the same thing?"

**KROUT** "No, because I think the important thing is to get both owners to agree to it, and if this owner doesn't agree to it, then there is no way to make them try work things out in the future."

**MICHAELIS** "Well, you might have a problem in the future. If somebody comes in from the north, even though he agrees to it and they say 'no, they aren't going to, then you are still back to the same problem."

**KROUT** "It is real difficult as opposed to the C.U.P. where you have one owner and he is platting it all at one time. When you know development is going to be sequential, I think what the Comprehensive Plan suggests is that you still have some responsibility for trying to work these things through and keep the options open for that to happen in the future. Unless you start with this one, I don't think you have any options left in the future."

**WARREN** "What we have done in the past on that though, if you decide that, is to take that access over to the property line. Then if another wants to come in and you can work out a deal with them you can, but you don't mandate them to have a shared driveway when you don't have people that maybe can agree."

**KROUT** "Well, when you say 'we', Commissioner, who are you talking about?"

**WARREN** "Well, if we allow this on his property alone, clear over on the property line, I don't know, Mark, if that will work."

**KROUT** "That is where you are putting it."

**SAVOY** "That is what we are trying to do."

**WARREN** "You are trying to put it on the property line. Okay. This other one that I am looking at there is an additional one then?"

**SAVOY** "We just have two openings. One on the east line and one on the south line."

**WARREN** "Okay. And you are agreeing to put it all the way?"

**SAVOY** "Yeah, the access control shoved clear to the north and clear to the west. The allowed opening."

**GAROFALO** "Okay, are there any other questions? Okay, thank you."

**WARREN** "Do you need a motion on this?"

**GAROFALO** "Yeah."

**MCKAY** "As a member of the Subdivision Committee, I don't actually have a problem with keeping in Requirement D."

**WARREN** "In keeping it?"

**GAROFALO** "I don't think it says anything about that here."

**WARREN** "Item D provides for the joint access, doesn't it? I don't have that in front of me now."

**MCKAY** "Which one are we talking about?"

**GAROFALO** "We are talking about Item D. My question was only about the two accesses."

**MCKAY** "That isn't what Marvin was talking about. He was talking about the cross-lot."

**KROUT** "I guess you took the cross-lot access question out of the staff report because of the Subdivision Committee recommendation."

**STRAHL** "Right."

**KROUT** "Go back to the zoning slide. I guess my feeling is that if was all coming in as a C.U.P. and it was going to be three or four lots instead of two lots, you would have required joint opening and cross-lot access. That is a standard requirement. Now, I know it is not a C.U.P., but what we are trying to do is get well-planned developments. We know there is going to be commercial development on the rest of that corner, and what we are trying to do is keep the corners with a minimum number of obstructions and openings. I guess, yes, this can develop with an opening to the west and an opening to the north, but there would be much more efficient circulation if you required of this lot what you would require in any C.U.P."

When you have a C.U.P., you almost never have any idea but what the lots are going to be, how they are going to be developed, if it is going to be developed to the west, so I don't see that this is really a different situation than what you apply to C.U.P.s all of the time."

**MCKAY** "Is the ownership of all of this pink area the same. The ownership clear around this piece of subject property the same owner?"

**SAVOY** "No, sir, it is not. The ownership is kind of jumbled up. There is not a specific use to go on any of the adjacent property at the present time either. That was part of the problem with the people wanting to buy this, not having any idea who they were sharing a drive with. Was it going to be a Wendy's, a McDonald's?"

**MCKAY** "Do they have a user on this piece?"

**SAVOY** "Walgreens."

**MOTION:** That the plat be approved, subject to Subdivision Committee recommendations.

**WARREN** moved, **HENTZEN** seconded the motion.

**MCKAY** "Marvin, your concern is the cross-lot and not the entrance?"

**KROUT** "Right."

**MCKAY** "And what the applicant was saying was they didn't know what was going in there, so they didn't want to use the same driveway, which is two different subjects."

**KROUT** "Well, if you are allowing cross-lot access, then that does mean that you are allowing that lot to the north or the west to also permit that driveway."

**MCKAY** "But are we going to limit, when that develops, those people to have driveway?"

**KROUT** "I think that depends on what they come in with; what kind of use it is and whether or not it makes sense to separate them."

**WARREN** "Can we ask the applicant if he would accept a cross-lot agreement? That wouldn't include the drive?"

**SAVOY** "We had asked to not have to do that. That is why the Subdivision removed it."

**WARREN** "Okay."

**GAROFALO** "Is there any other discussion? Okay, we will vote."

**VOTE ON THE MOTION:** The motion carried with 13 votes in favor. There was no opposition.

-----  
**4/10.      S/D 00-21 – One-Step Final Plat of LORAC FIRST ADDITION, located on the north side of Harry, east side of St. Louis.**

- A. Municipal services appear to be available to serve this site. City Engineering needs to comment on the need for guarantees or easements. A 20-ft utility easement shall be dedicated to cover the existing sanitary sewer line. A hold harmless agreement shall be provided.
- B. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning department for recording.
- C. City Engineering needs to comment on the status of the applicant's drainage plan. The drainage plan is approved.
- D. City Engineering needs to comment on the access controls. The plat proposes three access openings along St. Francis, three access openings along Santa Fe, and two openings along Harry. In accordance with the Protective Overlay, the Applicant shall guarantee the closure of the westernmost driveway opening along Harry. Distances should be shown for all segments of access control. Two access openings along St. Francis and two openings along Santa Fe have been approved.
- E. The County Surveyor has requested additional boundary measurements.
- F. The legal description in the plat's text needs to reference the "Perrys" Addition in addition to the section, township and range.
- G. The Applicant is reminded of the screening requirements of the Unified Zoning Code and the Landscape Ordinance along the north, east and west property lines.
- H. Traffic Engineering needs to comment on the need for additional right-of-way along Harry. Engineering requests the dedication of an additional 20-ft of right-of-way. The portion of that dedication over the existing structures may be a contingent dedication. The plat's text shall state that this dedication would be contingent upon removal of the existing structures.
- I. The final plat tracing should reference a tie point to a section corner.
- J. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- K. The applicant shall install or guarantee the installation of all utilities and facilities which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- L. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- M. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (phone 316-729-0102) prior to development

of the plat so that the type of delivery, and the tentative mailbox locations can be determined.

- N. The applicant is advised that various State and Federal requirements [specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147] for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- O. The owner of the subdivision should be aware of the fact that the development of any subdivision greater than five (5) acres in size may require an NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Further, on all construction sites, the City of Wichita requires that best management practices be used to reduce pollutant loadings in storm water runoffs.
- P. Perimeter closure computations shall be submitted with the final plat tracing.
- Q. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
- R. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property.
- S. The applicant is reminded that a disk shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD. This will be used by the City and County GIS Department.

**GAROFALO** "I just wanted to question, and I suppose Engineering has approved these two access openings along St. Francis and two on Santa Fe? I was just questioning the four accesses?"

**STRAHL** "The original proposal was three access openings along each street to the east and west, so that was reduced down to two by Traffic Engineering."

**GAROFALO** "Two where?"

**STRAHL** "Two on each side."

**GAROFALO** "And the request was for three on each side?"

**STRAHL** "Originally, yes."

**GAROFALO** "Okay. That seems like an awful lot to me. Go ahead."

**WARREN** "My concern was, and I don't know if it is in here or not. I haven't had enough of a chance to look at this. Is that 15-foot requirement in staff comments, do you know? That 15 foot off of the frontage, extra dedication of the street right-of-way?"

**STRAHL** "That was Item H."

**WARREN** "That was a comment made by Vicki, if you remember. She wanted 15-foot street right-of-way off of Harry. I guess it is not in here."

**STRAHL** "It is Item H. It is 20 foot of additional right-of-way."

**WARREN** "Oh, 20 foot. Yeah, the dedication of an additional 20 foot. Okay. That is what I object to. Because if you take that 20 foot, it goes into that building about 10 foot, and I asked the City Engineer if there was any plan, anything she saw in the future that is going to widen Harry Street, and her answer was no. They don't have anything planned at all for the widening of Harry Street. I asked if they were to do that, how would they get the rest of that land. She said they would have to buy it.

So, in other words, what I heard was because these people, who want to use their land in a very legitimate way, are asking for a permit. We are going to take their 20 foot. Everybody else they are going to have to buy. I don't like that. I just don't think that requirement should be there. In the first place, what they are doing with their land is not going to create a need for that 20-foot. So if the need for the 20-foot is there, it is a City need. It is not anything they are going to do to create that need. So, I object to that 20-foot right of way. First, it is going to put those buildings in some kind of non-conforming use and that could give them all kinds of problems in the future."

**STRAHL** "The 20-foot additional right-of-way is required because the Subdivision regulations require a 50-foot half-street right of way along arterials. That is the reason for that requirement."

**WARREN** "I'm sure if we were planning a brand-new subdivision that would come in to play, but to come along and take 20 foot of his or her street, whoever this is..."

**KROUT** "As I understand the wording of this though, I don't think it puts the buildings in jeopardy because it says that the buildings would be under a contingent dedication and the City couldn't require that to be dedicated unless the owner was agreeing in one way or another to condemnation or voluntarily to take down that building."

**WARREN** "What good would it be then? You mean that it would be after the building was torn down?"

**STRAHL** "Yes. The contingent dedication is triggered after the buildings would be removed and the right-of-way would be imposed."

**WARREN** "If they came along and decided to put that street through prior to that happening, are you saying that they would pay for their building, if they decided to widen that street?"

**KROUT** "If they had to take the building in order to widen it, yes, but if they only need maybe a portion of it—but as long as they don't need the building, they wouldn't take the building."

**WARREN** "I think where there is no 'construction occasion', and that is something I read in that court case, we have no envision of widening that street, I think it is wrong to take that land."

**GAROFALO** "Okay. But Ray (Warren), you did vote for it in the Subdivision."

**WARREN** "And I made that same thing clear. I didn't want to stop the project. I am not going to vote against it as a project, I am just saying that that is wrong to take those folks' land away from them."

**GAROFALO** "Is there any other discussion on this item? If not, we can have a motion."

**MOTION:** That the Planning Commission recommend to the governing body that the request be approved.

**MCKAY** moved, **LOPEZ** seconded the motion, and it carried with 12 votes in favor. Warren opposed. Marnell was not present.

5. **DR 00-04** - Request for a Street Name Designation from Oliver to Buckner. Wichita/Sedgwick County Addressing Committee, 455 North Main Street, Wichita, KS 67202

LOCATION:	Oliver between 55 <sup>th</sup> St. South and 63 <sup>rd</sup> St. South
LEGAL DESCRIPTION:	Oliver Street as platted in the Stone Creek Addition
REASON FOR REQUEST:	The adjoining subdivision of Stone Creek is being replatted and will be using the name Buckner.
CURRENT ZONING:	RR, Rural Residential

**GAROFALO** "Is there anyone in the audience who wants to speak on this agenda item, which is a request for a street name designation from Oliver to Buckner near Derby?"

**MCKAY** "Is that 55<sup>th</sup> Street South, Sir?"

**GAROFALO** "Oliver between 55<sup>th</sup> Street South and 63<sup>rd</sup> Street South."

**MCKAY** "I just wanted to make sure, because we are not going to change the name of Oliver north of 55<sup>th</sup> Street."

**GAROFALO** "I don't think so. Do we need a presentation on this, or can we just vote on it?"

**WARREN** "For those who aren't familiar with it, I might say that this is a brand-new road. It was just now cut in."

**KROUT** "And the County put Oliver signs on the new road, and all of the people on existing Oliver started calling us saying 'what are you going to name our street. We have had addresses on it for years and years. County Public Works just assumed that that was going to be Oliver, and now I guess we have convinced them that that is probably not a good idea. We did send notices to those people on existing Oliver to let them have input, but I guess they feel like the process is working."

**WARREN** "Well, old Oliver just goes down there now and dies. It is cul-de-sac or some kind of turn-around at the end of old Oliver."

**WHEELER** "But Oliver still exists to some point."

**KROUT** "It does exist and there are properties that will front on it."

**WHEELER** "Does this affect Derby or do we have Derby's input on this?"

**KROUT** "We have Derby's input. Derby named the street through their city, including north 53<sup>rd</sup> Street. They already named it Buckner. So it wouldn't have made sense, from that standpoint to have a street that changed names in the middle."



**GAROFALO** "And it aligns with Buckner down in Derby."

**KROUT** "Right."

**MCKAY** "Well, Oliver will still be a street there, but it is not the new street. So there will still be an Oliver and a Buckner running parallel to each other for quite a ways."

**GAROFALO** "I don't think we need any further explanation."

**MOTION:** That the Planning Commission approve the name change.

**MCKAY** moved **CARRAHER** seconded the motion, and it carried unanimously (13-0).

-----

6. **Case No. CU-566** – Charles and Mary Starks (Owner/Applicant); Divine Towers International and Ferris Consulting c/o Greg Ferris (Agents) request a Conditional Use to permit a commercial communication tower on property described as:

A tract of land in the Northeast Quarter of Section 25, Township 27 South, Range 2 East of the 6<sup>th</sup> P.M., Sedgwick County, Kansas, being described as follows: Commencing at the NE corner of said NE1/4; thence S 00 degrees W for a distance of 604.81 feet; thence N 90 degrees W for a distance of 60 feet; thence S 00 degrees W for a distance of 40 feet; thence S 90 degrees E for a distance of 60 feet; thence N 00 degrees E for a distance of 40 feet to the point of beginning. Generally located approximately 700 feet south of Kellogg on the west side of 159<sup>th</sup> Street East.

**SCOTT KNEBEL**, Planning staff, pointed out land use and zoning; and showed slides of the general area. He reviewed the following staff report:

**BACKGROUND:** The applicant is seeking a Conditional Use to permit the construction of a 150-foot commercial communications monopole for use by AT&T Wireless Services. The monopole will be sited on a 2,400 square foot area located approximately 700 feet south of Kellogg on the west side of 159<sup>th</sup> Street East. Access to the site is to be from 159<sup>th</sup> Street East. The applicant's site plan (attached) depicts a 60-foot by 40-foot compound enclosed by a chain link fence. Within the enclosure would be the monopole and an equipment shelter. The monopole would be constructed so as to be able to accommodate up to three carriers. The site is apparently within the floodway fringe of Four Mile Creek.

Most of the property surrounding the site is undeveloped. The nearest developed properties are commercial properties along Kellogg on the east side of 159<sup>th</sup> Street East in Butler County. The nearest property developed with residential uses is a single-family residence located approximately 1,100 feet to the south on the east side of 159<sup>th</sup> Street East in Butler County. On the west side of 159<sup>th</sup> Street East in Sedgwick County, property to the north, south, and west of the site is zoned "SF-20" Single Family Residential and is used for agriculture.

The applicant's justification for the request (attached) indicates this site is necessary for AT&T Wireless Services to provide continuous coverage northwest of the city around K-96 and Ridge. The closest existing towers are between 1.9 and 2.5 miles east of the site, and AT&T Wireless Services is co-locating on one of those towers. Since this is a largely undeveloped area, there are not any buildings of sufficient height which might provide alternative support structures on which to locate antennas. The applicant states that the 150-foot height is needed to achieve coverage targets, but that a height of 120 feet will satisfy immediate coverage needs while increasing the chance that additional sites will be needed in the future. According to a letter from an aviation consultant, this site complies with the Federal Aviation Administration hazard standards, and should not be a hazard for aircraft.

There currently is a commercial communication tower study ongoing by the city and county. The study is focusing on possible alternatives to the construction of new tower structures. Due to the undeveloped nature of the property in the vicinity of this site, none of the study's alternatives to new towers is likely to be applicable in this case. The study also proposes design guidelines for new commercial communication towers, and staff's recommended conditions of approval regarding landscaping, glare reduction, and lighting are intended to bring the proposed new tower into general compliance with the proposed design guidelines.

In addition, staff recommends approving the tower for only 120 feet to lessen its negative visual impact. Coverage plots submitted by the applicant (attached) indicate that 120 feet will provide sufficient coverage to currently developed areas. Even with a 150 foot tower, additional towers likely will be needed to the northwest and southwest of the site in the future to provide coverage to properties in the area as they develop. To preserve future options for additional users at this site, however, staff also recommends that the tower be designed and constructed to permit future height extensions of up to 30 feet.

**CASE HISTORY:** The site is unplatted.

**ADJACENT ZONING AND LAND USE:**

NORTH: "SF-20" Agriculture  
SOUTH: "SF-20" Agriculture

EAST: Butler Co. Outdoor vehicle and equipment sales; warehousing  
WEST: "SF-20" Agriculture

**PUBLIC SERVICES:** No municipally supplied public services are required. The site has access to 159<sup>th</sup> Street East, a two lane paved section-line road with 1997 traffic volumes of approximately 200 vehicles per day. The proposed 2030 Transportation Plan estimates that traffic volumes on 159<sup>th</sup> Street East will increase to 1,900 vehicles per day.

**CONFORMANCE TO PLANS/POLICIES:** The Land Use Guide of the Comprehensive Plan identifies this area as appropriate for "Low Density Residential" development. However, the proposed update to the Comprehensive Plan identifies this area as appropriate for "Commercial" development. Given the updated indications of appropriate future development, this site generally conforms to the updated Land Use Guide of the Comprehensive Plan. The Plan does not speak specifically to telephone or cellular phone service, however there is a statement indicating the need to provide the highest quality utility services to the public at a reasonable cost. Section III.D.6.g of the zoning code lists five conditions that commercial communications towers are subject to meeting: unobtrusive paint scheme, no nighttime lighting of the tower except for aircraft warning lighting, no advertising, demonstrate that an effort has been made to co-locate on an existing tower, and willingness to provide space for other communication towers.

**RECOMMENDATION:** Based upon information available prior to the public hearings, planning staff recommends that the request be APPROVED, subject to the following conditions:

- A. All requirements of Section III.D.6.g. of the Unified Zoning Code shall be met.
- B. The site shall be developed in general conformance with the approved site plan. All improvements shall be completed before the facility becomes operational.
- C. The applicant shall receive the necessary approvals from the County Engineer for construction in or removal of the site from the floodway fringe.
- D. Removal of existing trees in and around the site shall be limited to the access easement, the enclosure area, and 5 feet outside the enclosure area. All removed trees shall be replaced with a like number of new trees in conformance with a landscape plan to be submitted and approved by the Director of Planning.
- E. The support structure shall be a "monopole" design that is silver or gray or a similar unobtrusive color with a matte finish to minimize glare.
- F. There shall be no lighting of or on the monopole.
- G. The monopole shall not exceed 120 feet in height to lessen its negative visual impact.
- H. The monopole and its foundation shall be designed and constructed in such a manner that permits future height extensions of up to 30 feet.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: Most of the land adjacent to the site is currently used for agriculture and is zoned "SF-20" Single Family Residential. The nearest developed properties are commercial properties along Kellogg east of 159<sup>th</sup> Street East in Butler County. The character of the land is agricultural, with urban development approaching from the north, east, and west.
2. The suitability of the subject property for the uses to which it has been restricted: The site is zoned "SF-20" Single-family Residential. Commercial communication towers are uses that may be permitted, subject to conditions, in this district. The site could be developed with single family residences if a commercial communications tower is not constructed.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The site is currently undeveloped. The closest developed properties are located along Kellogg on the east side of 159<sup>th</sup> Street East in Butler County. No evidence has been presented to date that the construction of a monopole will detrimentally affect nearby property to a greater degree than will the development of the property with commercial uses, which is indicated by the Comprehensive Plan as being the appropriate future development for the site. The only impact to be noted at the time this report was prepared is the visual impact of a monopole.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan: The Land Use Guide of the Comprehensive Plan identifies this area as appropriate for "Low Density Residential" development. However, the proposed update to the Comprehensive Plan identifies this area as appropriate for "Commercial" development. Given the updated indications of appropriate future development, this site generally conforms to the updated Land Use Guide of the Comprehensive Plan. The Plan does not speak specifically to telephone or cellular phone service, however there is a statement indicating the need to provide the highest quality utility services to the public at a reasonable cost.
5. Impact of the proposed development on community facilities: No impacts have been identified, as municipally supplied services are not required.

**KNEBEL** "The applicant has submitted a site plan which indicates that the tower would be enclosed in a 60 foot x 40 foot compound with a chain link fence and would be surrounded by existing trees to the west and to the south. The other issue is that this property is apparently either within the 100-year or the 500-year floodway fringe of Four Mile Creek, which is right here (indicating). It was difficult to tell on the FEMA maps exactly where it is without doing some survey work.

Most of the property surrounding this site (indicating) is undeveloped. The applicant has requested this site to provide PCS phone service to the areas along Kellogg and Interstate 35. There are no towers or other tall structures within the general vicinity. The closest ones are 2 or 2-1/2 miles away. One of the applicants, AT&T wireless service, will be using one of those sites. The applicant has requested 150-foot monopole, but has indicated that 120 feet would provide the coverage needs, but would also increase the chances that an additional tower in the area would be needed.

As I am sure everybody is aware, there is a study going on and has been for several months regarding commercial communication towers. There are some proposed guidelines for the design of such facilities in this plan that will be coming to you in the future. The staff recommendations reflect those proposed design guidelines in addition to recommending 120-foot height, rather than 150 foot. The area is identified in the existing Comprehensive Plan as being low density residential, but the proposed Comprehensive Plan, which is in the discussion stage, indicates that this area in the future would be appropriate for commercial development.

Staff is recommending approval of this, subject to some conditions. There are a number of requirements in the Unified Zoning Code regarding lighting, painting, etc., that we are recommending. We are recommending that the site be developed in compliance with the site plan that has been submitted; that the applicant demonstrate that the site is or has or will be removed from the floodway fringe; that the trees that are removed from the site be replaced with a like number of trees based on a landscape plan; that the monopole be silver or gray or some other unobtrusive color with a matte finish to minimize glare; that there not be lighting; and then, as I mentioned before that the monopole be 120 feet with the possibility to extend 30 feet. The applicant and a neighboring property owner have been discussing this for the last couple of hours, so it is probably best to hear from them unless people don't understand some of the things that are in the staff report."

**GAROFALO** "Scott, I have a question, and I think maybe you covered it but I wasn't paying attention at that time. On Page 2, I think there is an error there."

**KNEBEL** "There is an error on Page 2, that is correct."

**GAROFALO** "So it would provide coverage where?"

**KNEBEL** "It provides coverage to the east of the City along I-135 and Kellogg. You will see the staff report that has that same sentence in it in a couple of items."

**GAROFALO** "Are there any other questions of Scott? Okay, if not, then we will hear from the applicant."

**GREG FERRIS** "I am a representative of AT&T Wireless and Divine Tower International, who are proposing this site. You will recall, several weeks ago we were here on three other towers. This tower and one other tower that you will be hearing later is the conclusion of the AT&T build-out for the Wichita-Sedgwick County area. Out of 40 sites in Sedgwick County area. Out of 40 sites in Sedgwick County, 35 of those sites were on either existing buildings or existing monopoles or existing towers. As the staff has cited, there is nothing in this area for us to be able to provide continuous coverage along Kellogg and along the Turnpike and into the residential areas that are adjacent to those.

This is a very important tower in the AT&T system. At the time we were here 3 weeks ago, this tower was actually proposed at that time. I will show you where we had originally planned to put that. (Indicating) It was in this area down in here. The property owner to the east in Butler County and some property owners to the west did not like that site, staff did not like that site and asked us to move this site closer to Kellogg. You can see that we have accomplished that goal.

We concur with the findings of staff with the exception of the height and I will go into that real briefly. You will have in your backup information; some plots that the 150-foot tower covers the Turnpike where the 120-foot tower does not. Staff is also recommending that we build a 120-foot tower with a 30-foot extension. A possibility at a later date. We believe that that is prudent because that is why we recommended a 150-foot tower in the first place.

This is an area on the outlying fringes of the community. It is a very highly developing area. There will be a great demand for wireless service out there and there will be another two providers that want to be on this tower. The 150-foot area will make it easier for them to locate. Frankly, it doesn't make much sense to ask AT&T today to build a 120-foot tower and then to come in at a time one year from now and add 30 foot to it and have to go through a Conditional Use process to do that. We believe that 150 foot is appropriate in this location near Kellogg and should be approved today. All of the other restrictions that staff is recommending, we would concur with.

I will tell you now that we do not want this issue deferred and the main reason is that we have deferred this about 6 weeks to try and accommodate the neighborhood and the area to the east and staff. We believe that today is the appropriate time; however, the property owner directly to the east of this property has an intention to develop this into a single-family area. While I personally don't believe that it has any negative impact on that, AT&T and the property owner have agreed that we are willing to sit down over the period of the next two week protest period that the property owner has, to see if we can find an alternate site and if we are able to find an alternate site, AT&T will go to the expense, and I will tell you that it is not a small expense, to file another case. However, in the event we are not able to reach that, we need to move forward because there probably will be protests, and you know how long those things can take.

We believe that this is a good case. We believe it is a solid case, and that it should be approved here only on its merits and rights. But AT&T's goal from the day they came to town was to try to accommodate neighbors and businesses and whoever they possibly could, and staff wherever possible. So it is our position, and I will formally state as a matter of record that my

position, as a representative of AT&T is that we will sit down and in good faith attempt to find another site. The property owner may or may not speak, but he has also made that good faith position, that in the event we all can arrive at a site that is better than this one, that can be accomplished with no opposition, that AT&T will go to the expense of re-filing this case and re-surveying it, etc. However, we do not want this case deferred because they have two weeks in which we can negotiate this. They have not given up any of their rights in that process, so we believe that it is imperative for it to go forward today. We believe that there are no negative issues whatsoever to this case from our standpoint, except for the recommendation that it be 120 feet.

I do have a representative here from Lucent Technology who has been in the industry for 14 years, who has done these both in and near developing residential areas. If you have some questions for him, he is available, and that is Chester Slaughter. Kim Wimmer is here from Divine Tower, International. She frankly is the brains of that operation and is here if you have any questions. I also would be glad to answer any questions."

**WARNER** "You are asking for 150 foot and not 120 foot at this time?"

**FERRIS** "That is correct and we believe it is prudent, not only in our interest, but also in the interest of the area. Because if you build a 120-foot tower, you are going to have to add onto it at a later date because this area is developing and frankly a pole that is built at 150 feet is more structurally sound than one that is built at 120 with a 30-foot extension. Anybody that is an engineer knows that you are better off to put one pole up than to put two poles up."

**GAROFALO** "Are there any other questions of Mr. Ferris? Okay, thanks. Is there anyone else to speak in favor of this application? Is there anyone to speak in opposition?"

**BOB KAPLAN** "I am at 430 North Market. You have a luxury today; I am going to spare you 5 minutes of Bob Kaplan on this case. (Applause here). I knew that. I do believe that we have come to accommodations so you don't need to look at my slides and transparencies and listen to me. I want to make it very clear that in this particular place, it just happens that all of the parties involved are extremely well acquainted with each other. The landowner, Mr. Charles Stark, who I have done legal work for, is well acquainted with Mr. Bush. We all live in the same area, we know each other well, hopefully we trust each other because what I am doing, I am doing on the basis that I have a lot of faith in Mr. Ferris' good word and Mr. Stark's good word, and we have tentatively selected an alternate site. They have agreed that they will come in and re-file if required. We have notice issues here, we have legal and factual issues. I have kept Mr. Krout and his staff fairly well informed as this case has progressed.

So we are not going to formally oppose this application today. What I do want the record to reflect is that my clients, who have a final plat on a residential subdivision directly across the street from the present application site, which I have pictures of are not waiving any right of appeal and the matter may yet find its way into a courtroom. It is possible, because I think there are legal issues. The County Counselor disagrees with me, but they are just wrong. So we are going to go forward with this very clear understanding, and Greg has told me that he will confirm it. Mr. Stark and his lovely wife are in the room. We have met and know each other well. I believe that we will be able to come up with an alternate site, which we have tentatively identified, which means that you are going to hear it and hopefully approve an alternative site and this one will not be built. We don't like this one. But we are going to go ahead and let Mr. Ferris go ahead and not worry about a February 28 closing date for new a application.

I believe that is pretty much the record. I don't know if Mrs. Bush wants to speak. Do you want to want speak, Debra? Okay. If there are questions, I will be glad to address them. I don't want my comments taken. I think what we are doing, Commissioners, is just bumping it back to you. You do what you would do and you take it and decide on it on the merits, but Mr. Ferris has it presented without the disadvantage of having any vocal opposition subject to the agreements, which we have entered into. I think that is fairly set, is it not?"

**MCKAY** "Well, if we are going to do an alternate location, you are not talking about the same adjacent land owners and maybe we will have the same problem with an alternate one that we did with this one."

**KAPLAN** "John, I think we are. I have been to the title company. We have massaged this pretty good. The thing we have out here is all of the property owners, sir, own about 100 acres. Charlie Stark owns 160 acres. The property to the north that you approved, owned by Dr. Downing is 160 acres. To the east, everybody has already been notified. If we were to re-notify it, I am convinced that the notifications are going to go to the same people. I don't think we need to re-notify it. Mr. Krout checked with the County Counselor and they think we do. But there are not going to be new people involved in the alternate. I am satisfied of that."

**PLATT** "I am confused. Apparently Mr. McKay and the speaker know what the problem is, but I would like to know what the problem is."

**MCKAY** "I don't know what the problem is, I just asked."

**KAPLAN** "In regard to the present location?"

**PLATT** "Yes. And apparently in regard to the next one you are going to have, too."

**KAPLAN** "Well, if you want to see the transparencies, I can do that for you."

(Mr. Kaplan showed transparencies here).

**KAPLAN** "Their concern is that cell tower, right across the street from these single-family homes and from this major entrance is going to have an economic downside, is going to have an economic impact and some of the good natured argument that Mr. Stark and I have had, and I told him to move it into his own property. Charles has an idea that maybe he will plat this someday. I told him to move it into his own property. If you don't want to look at it, why in the world should we have to look at it? It is your property and it is your deal. So that is what started it. They just don't want a cell tower right outside the entrance to a single-family development."

**PLATT** "How far would be acceptable?"

**KAPLAN** "Well, we came up with an alternate site that didn't fly and we are looking at another one. We wanted 334 feet of separation, but if you are interested, and that is up to you, we have a problem in this area and I will show you why. (More transparencies here). We have all of this flood plain. We have been working with the engineers and trying to come up with something. We have a lot of floodway and a lot of flood plain. We wanted to move it in further. Mr. Stark doesn't want it in that far, so we are looking at an area that we have tentatively identified down in here (indicating). The floodway and floodplain just makes it very difficult from an engineer's standpoint. I have Kenny Hill from Poe and Associates who has tried to do some siting work for us. But between the subdivision and the floodway, it just becomes a difficult area to work with. That is why we couldn't pinpoint a location for today. We have to look a floodplain and a floodway and be sure that we clear those areas and be sure that we can clear those areas and that we've got a buildable site."

**PLATT** "If we were to approve it, should we put into the approval that it must be 334 feet away?"

**KAPLAN** "Well, obviously, that is going to be beneficial, certainly. That is going to be beneficial to my clients. That is the separation distance that if they had their druthers on, yes, that is what they would like to have. So, certainly, if the Commission is favorably disposed towards that condition, then that is a benefit to the property."

Carraher left the meeting at 2:55 p.m.

**GAROFALO** "Are there any other questions of the applicant's agent? Thank you. Is there anyone else to speak in opposition? Okay, then Greg, you have two minutes for rebuttal."

**FERRIS** "Thank you, Mr. Chair. Let me be real specific. Bob and I were sitting there drawing circles on a map. AT&T has not agreed to any spot because we are going to have to survey and make sure that wherever we all chose is...but what we have agreed to do is sit down in good faith to try and make every reasonable attempt to find a location that will meet the test of no opposition. We believe that, as you see today, that only the Bushes are concerned with this site. If we can move it to wherever 200 feet or 300 feet or whatever it might take to accommodate their concerns that we will indeed find a site that has no opposition. We have an idea of a general area in which that might be possible to attain, but without our engineers looking at the actual land and making sure that we aren't indeed in the floodway, but you know how those issues are.

We do not want this application today approved contingent upon anything other than the record in which I stated that this has a merit of approval. We don't believe that it will have negative impact, but I do believe that in talking in the hallway for probably close to an hour, that Mr. Kaplan, the Bushes, myself and Mr. Stark, along with my clients, believe that we can reach an amicable settlement to this issue, in which case, we will file for a new case, regardless of whether we believe we need to or not and unless we get some firm ruling from the County that documents the fact that we do not need to file another case, we will file another case if we can agree on a spot. We believe, at that time, assuming that we could all meet the criteria that the Bushes have that Mr. Stark has, that AT&T has, and we can find that site, we assume that it will come to you with absolutely no opposition. But we, as Mr. Kaplan reserves the right to appeal this decision, we also reserve the right, at AT&T, to make sure that our interests are protected in the new site, and that we are able to actually construct a tower and an access road as needed.

This is a little unusual, I know, and it is a little difficult, perhaps, for you, but had we not already deferred this case a couple of months to accommodate the Bushes and another property owner, we wouldn't have any problem with delaying it further. But in the event that we delayed it today or put undue restrictions on it today and we were not able to come up with an agreement, then we would be in trouble."

**WARREN** "It is refreshing to have people that seemingly want to work together on this, that is great, but I think your interest is a 'time is of the essence' interest here today. But if this decision, even if we made it favorably for your client, if it is appealed, then you are going to lose the advantage of 'time is of the essence', I would think."

**FERRIS** "That is correct, and frankly, that is the reason why we are willing to sit down with the Bushes and negotiate an agreement."

**WARREN** "Well, in either event, it looks to me like you are going to get delayed."

**FERRIS** "We are going to get delayed, you are correct. That is why we don't want it deferred another two weeks, because in the event we were not able, then we have lost two weeks of that clock running. So the clock starts running today and we have two weeks to work out an agreement. If we don't and they protest it, then we go through whatever action is necessary for that, and we realize that we are then into an April time period. If we find an area with no opposition, and we can do that, we are into an April time period. So frankly, from our standpoint, that time period, if we start today, is virtually the same.

If we lose a couple of weeks and then perhaps something happens and we lose another couple of weeks, we are in a little bit of trouble. This site needs to be on-line in April and we have already lost 6 to 8 weeks on this process."

**OSBORNE-HOWES** "Does this mean if a 150-foot tall tower is approved, does it have to be at least 150 feet from the road?"

**FERRIS** "I am not sure. I think it is actually more than that."

**MCKAY** "On your sketch, it only shows 120 feet."

**FERRIS** "It is 123 feet. That's correct."

**OSBORNE-HOWES** "Are there some rules about how far away it must be though? "

**KNEBEL** "There is a compatibility height standard for tall structures that relates to property that is zoned 'TF-3' or more restrictive. It is kind of complicated. It is 50 feet for the first 35 feet and then 3 feet for every foot in height over 35 feet. I don't have my calculator on me. Did we figure out 150 before...is it 195 or something like that."

**KROUT** "Across the street, I guess is where you would measure it, and it would be something like 350 feet."

**KNEBEL** "Actually, it would not be from across the street because that property is not zoned 'TF-3' or more restrictive."

**KROUT** "That's right. It is into Butler County so it is not applicable."

**HENTZEN** "I would like to ask Scott a question. You mentioned a study that is being made, I guess on the Wireless Master Plan. Is that what you are referring to?"

**KNEBEL** "Yes, sir."

**HENTZEN** "It has not been adopted, has it?"

**KNEBEL** "No, sir."

**HENTZEN** "It has not been presented to us yet, has it?"

**KNEBEL** "Yes, actually, it has been, and there have some public hearings on it. And there has been a staff committee meeting."

**HENTZEN** "It sounds like the argument for going ahead and putting up a 150-foot tower is valid. In other words, that is what they need and that is what they want. Are you or anybody in your department able to tell me the height of a tower from road? What I am saying is, what is your objection to the 150-foot?"

**KNEBEL** "Primarily just the aesthetic value. The fact that you can see it from further away."

**HENTZEN** "I want to tell you that I have made my living for 36 years estimating sizes and costs and buildings and I am telling you that I can't tell the height of a pole from the road."

**KNEBEL** "Okay."

**HENTZEN** "I am just trying to find out what you are using to determine that that ought to be 120 instead of 150?"

**KNEBEL** "Like I said, the aesthetic value, the fact that you can see something that is 150 feet tall from further away than something that you can see 120 tall. The other issue is that in their application they stated that 120 feet would provide sufficient coverage for this site."

**HENTZEN** "That wasn't what I heard today."

**KNEBEL** "Well, what you heard was that it would provide sufficient but not optimum coverage."

**MCKAY** "Is this the location that it is going to go on?"

**KNEBEL** "Yes."

**MCKAY** "And we are concerned about seeing it?"

**KNEBEL** "Well, they are going to have to take those trees out."

**MCKAY** "Well, they aren't going to take all of the trees out. They may take the drive out, but I doubt very seriously that they will take out all of the trees."

**KNEBEL** "Well, you will certainly be able to see this 30 feet above 120 feet better than you could anything else."

**WARREN** "I think what I am hearing here is that if we approve this application as presented, subject to, more or less, height, I think I am hearing that it is going to be litigated. If that is the case, what is that going to do to the timing of this case?"

**KROUT** "If it is protested and goes to the County Commission and the County Commission approves it, they will be able to obtain the building permit, even if it is litigated, unless the court takes action to restrain them from doing that. I can't say whether it will or won't happen. It is possible that even though there is litigation, they could put up their tower in the meantime."

**MOTION:** Having considered the factors as contained in Policy statement No. 10; taking into consideration the staff findings (The zoning, uses and character of the neighborhood: Most of the land adjacent to the site is currently used for agriculture and is zoned "SF-20" Single Family Residential. The nearest developed properties are commercial properties along Kellogg east of 159<sup>th</sup> Street East in Butler County. The character of the land is agricultural, with urban development approaching from the north, east, and west. The suitability of the subject property for the uses to which it has been restricted: The site is zoned "SF-20" Single-family Residential. Commercial communication towers are uses that may be permitted, subject to conditions, in this district. The site could be developed with single family residences if a commercial communications tower is not constructed. Extent to which removal of the restrictions will detrimentally affect nearby property: The site is currently undeveloped. The closest developed properties are located along Kellogg on the east side of 159<sup>th</sup> Street East in Butler County. No evidence has been presented to date that the construction of a monopole will detrimentally affect nearby property to a greater degree than will the development of the property with commercial uses, which is indicated by the Comprehensive Plan as being the appropriate future development for the site. The only impact to be noted at the time this report was prepared is the visual impact of a monopole. Conformance of the requested change to the adopted or recognized Comprehensive Plan: The Land Use Guide of the Comprehensive Plan identifies this area as appropriate for "Low Density Residential" development. However, the proposed update to the Comprehensive Plan identifies this area as appropriate for "Commercial" development. Given the updated indications of appropriate future development, this site generally conforms to the updated Land Use Guide of the Comprehensive Plan. The Plan does not speak specifically to telephone or cellular phone service, however there is a statement indicating the need to provide the highest quality utility services to the public at a reasonable cost. Impact of the proposed development on community facilities: No impacts have been identified as municipally supplied services are not required.) I move that we recommend to the governing body that the request be approved, subject to the following:

- A. All requirements of Section III.D.6.g. of the Unified Zoning Code shall be met.
- B. The site shall be developed in general conformance with the approved site plan. All improvements shall be completed before the facility becomes operational.
- C. The applicant shall receive the necessary approvals from the County Engineer for construction in or removal of the site from the floodway fringe.
- D. Removal of existing trees in and around the site shall be limited to the access easement, the enclosure area, and 5 feet outside the enclosure area. All removed trees shall be replaced with a like number of new trees in conformance with a landscape plan to be submitted and approved by the Director of Planning.
- E. The support structure shall be a "monopole" design that is silver or gray or a similar unobtrusive color with a matte finish to minimize glare.
- F. There shall be no lighting of or on the monopole.
- I. The monopole shall not exceed 150 feet in height.

**MICHAELIS** moved, **MCKAY** seconded the motion.

**BARFIELD** "In approving these previously, have we approved any above 120 feet?"

**GAROFALO** "Yes."

**MCKAY** "The one at Central and Edgemoor because it was in the shopping center, we required them to go higher, remember that, Dale?"

**MILLER** "Well, it is built to go higher, but I don't know that they built it to 150 feet."

**KROUT** "It was 120, but built to go higher."

**GAROFALO** "We recently have approved an extension on one or two of them up to 150 feet, I think. Okay. Is there any other discussion? If not, we will vote on the motion."

**VOTE ON THE MOTION:** The motion carried with 12 votes in favor. There was no opposition.

-----  
Susan Osborne-Howes left the meeting at 3:14 p.m.

7. **Case No. Z-3357** – Buildtech 2000 LLC c/o Jerry Michaelis (owner); Baughman Company, P.A. c/o Russ Ewy (agent) request zone change from "SF-6" Single-Family Residential to "TF-3" Two-Family Residential on property described as:

A tract of land lying in the NW 1/4 of Sec. 29, Twp. 26-S, R-2-E of the 6<sup>th</sup> P.M., Sedgwick County, Kansas, more particularly described as follows: Commencing at the SE corner of said NW 1/4; thence S89°00'08"W, 20.00 feet along the south line of said NW 1/4; thence N00° 49'16"W, 1825.09 feet, parallel with the east line of said NW 1/4 to a point of beginning, said point being a point on a curve to the left; thence along said curve to the left; thence along said curve 887.25 feet, said curve having a central angle of 89° 38'02", a radius of 567.15 feet, and a long chord of 799.50 feet, bearing N45°38'17"W; thence S 89° 32'42"W, 662.94 feet; thence S78° 21'42"W, 19.59 feet to the southerly right-of-way line of Missouri Pacific Railroad; thence N61° 31'26"E, 497.70 feet along said southerly line to a point lying 35.00 feet south of the north line of said NE 1/4; thence N89° 38'23"E, 824.88 feet, parallel with said north line, to a point on the east line of said NW 1/4; thence S00° 49'16"E, 792.07 feet along said east line; thence S89°49'16"E, 792.07 feet along said east line; thence S89°10'44"W, 20 feet to the point of beginning. Generally located south of 45<sup>th</sup> Street North, approximately one-half mile east of Rock Road.

**DONNA GOLTRY**, Planning staff, pointed out land use and zoning; and showed slides of the general area. She reviewed the following staff report:

**BACKGROUND:** The applicant is requesting "TF-3" Two Family zoning for a 7.3 acre tract of land located on the south side of 45<sup>th</sup> Street North approximately one-half mile east of Rock Road. The proposed layout of the subdivision shows approximately 15 lots, for an approximate density of 4 to 5 units per acre.

The site is located immediately north of Willowbend and west of Sun-Air Estates. While Willowbend and Sun-Air are both areas with single-family homes, they vary significantly in the type of development. Willowbend is a planned development that includes a golf course, country club facilities, and a strong homeowners association regulating private development within its boundaries by restrictive covenant. Sun-Air, in contrast, was platted in 1954 and developed over time with a mix of housing types, although all appear to be single-family units. From field observations, housing types in Sun-Air include conventional site-built housing, residential-designed manufactured homes, manufactured homes that would not meet residential-design standards, and even some mobile homes that could not meet post 1976 building requirements. Most of the lots are between one and 1 ½ acre in size.

The Union Pacific railroad right-of-way forms the western boundary of the tract. The property between the railroad right-of-way and Rock Road is platted as 45 Rock Road Industrial Park Addition, and is occupied by an oil well and industrial service building. There is a small cemetery at the corner of Rock and 45<sup>th</sup>. The property to the north of 45<sup>th</sup> Street is in agricultural use, but a residential plat has been filed.

The applicant has held discussions with the Willowbend Homeowners Association regarding mutually acceptable conditions that the developer is willing to incorporate as part of this zoning application. The proposed conditions are:

1. A building height limitation of 25 feet.
2. The front of each unit to be of brick construction from ground level to a height of 4 feet as a minimum.
3. Two 3" caliper trees will be planted and maintained in the rear setback of each unit.
4. Covenants of the neighborhood will be materially the same as Willowbend North.
5. Rooflines will be alternated to be hipped, gabled and Dutch hipped and the roofing material to be Heritage II, 30 year or equivalent.
6. No wooden or chain link fences allowed.
7. None of the conditional uses listed in Wichita-Sedgwick County Unified Zoning code Article III, Section III-B.c, amendments through March 27, 1998, will be permitted. (see zoning code pages 49, 50, 51.)

All of these conditions except Condition #4 can be handled as a Protective-Overlay to the zoning change. Condition #4 would need to be a private restrictive covenant between each of the parties, with the City not being a party to the agreement. Modifications to Condition #7 would be appropriate to reflect the UZC adopted October 28, 1999. The Conditional Uses are the same as contained in the previous UZC dated March 27, 1998.



**CASE HISTORY:** The property is unplatted. A previous zoning request was denied for "OW" Office Warehouse on January 27, 1998 the Wichita City Council. The site also was the subject of a zoning request in 1982 for "E" Light Industrial zoning. Apparently, the Sedgwick Board of County Commissioners approved this request, but the plat was not completed and the city annexed the property on November 19, 1982, effectively closing this case without it being rezoned.

**ADJACENT ZONING AND LAND USE:**

NORTH:	"SF-20" Single Family	Agricultural
SOUTH:	"SF-6" Single Family;	Single-family (Willowbend)
EAST:	"SF-20" Single Family	Single-family
WEST:	"L" Limited Industrial	Vacant

**PUBLIC SERVICES:** The site has access via 45<sup>th</sup> Street North, which is developed to County two lane standards. Traffic volume was estimated at 300 ADTs in 1997. This is projected to increase to 2,000 ADTs in 2030, based on assumed development between Rock and Webb. If the proposed project were approved, it would add a slight increase to these projected volumes. There are no plans for improving 45<sup>th</sup> Street in this segment.

The property can be served by public water and sewer extensions.

**CONFORMANCE TO PLANS/POLICIES:** The "Land Use Guide" of the Comprehensive Plan identifies this property as "low density residential." Low density is defined as traditional single-family detached, zero lot line units and cluster subdivisions at a density of 1-6 units per acre. The proposed zoning request for "TF-3" is considered medium density due to the use of duplex units, which are defined as being medium density by the Land Use Guide.

The presence of a variety of housing types and densities is the recommended goal for residential land use in the Comprehensive Plan. The objective (II.A) is "to encourage infill and higher density residential development that maximizes the public investment in existing and planned facilities and services." Strategy II.A2 recommends "consider new requirements for medium and high-density residential development, which would involve development plan and architectural review to ensure compatibility with surrounding low-density residential areas." The proposed duplex development follows the recommended objectives and strategy (II.A2) to allow a medium density development that is compatible with the adjacent low-density planned development in Willowbend.

**RECOMMENDATION:**

While the proposed project is classified as medium density, it is proposed to have a total of approximately 15 duplex units, which yields a density of slightly above 4 dwelling units per acre, within the density range of single-family development. The development conforms with the objective and strategy of providing a variety of housing types by having medium-density residential development compatible with surrounding low-density residential. Based on these factors and information available prior to the public hearing, Staff recommends the application be APPROVED, subject to platting within one year, and subject to the following Protective Overlay:

1. Building height shall be limited to 25 feet.
2. The front of each unit shall be of brick construction from ground level to a height of 4 feet as a minimum.
3. Two 3" caliper trees will be planted and maintained in the rear setback of each lot with a residential building.
4. Rooflines shall be alternated to be hipped, gabled and Dutch hipped, and the roofing material shall be Heritage II, 30 year or equivalent.
5. No wooden or chain link fences shall be allowed on the property.
6. None of the Conditional Uses listed in Wichita-Sedgwick County Unified Zoning code Article III, Section III-B,c, October 28, 1999, shall be permitted on the property.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: Willowbend borders the site to the south. The area to the east is a suburban single-family area with a range of housing types (conventional and manufactured homes). The area to the west is zoned for industrial use, but is vacant. Farther to the west along Rock Road, there is an oil service building and an oil well, and a small cemetery. The area to the north is vacant and agricultural land that is still outside the city limits.
2. The suitability of the subject property for the uses to which it has been restricted: The property is currently vacant and could be developed as single family.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The duplex uses are not expected to detrimentally affect the surrounding area. The suggested Protective Overlay should ensure compatibility with the area to the south.

4. The length of time the subject property has remained vacant as zoned: The property has remained vacant since 1982 when the original application for "E" Light Industrial zoning that was filed, but not completed. More recently in 1998, an application for "OW" Office Warehouse was denied by the Wichita City Council.
5. Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: The requested change in zoning classification is not in conformance with the Wichita Land Use Guide. However, as discussed earlier, it is in conformance with objectives and the strategy for encouraging a variety of housing types in a compatible manner with low-density residential development.
6. Impact of the proposed development on community facilities: The projected impact of the zoning change is to increase the total number of dwelling units in the area by approximately 30 units. This is a small increase that should not impact community facilities significantly.
7. Opposition or support of neighborhood residents: The residents of Willowbend have opposed efforts for industrial or office warehouse use. The homeowners association has met with the applicant to determine conditions that would be acceptable for duplex use by both parties.

**GOLTRY** "The applicant has requested these duplex units and has had a very unusual but good discussion with the residents from Willowbend and they have come up with and suggested a number of conditions that they would like to see followed. Those are included in the staff report. All of the requested conditions that the applicant and Willowbend requested can be incorporated as a Protective Overlay with the exception of one, which is on covenants for the neighborhood to be materially the same as covenants for Willowbend, and as I pointed out in the staff report, that is something more appropriately handled as a private matter of a Restrictive Covenant that would be recorded as a private document.

This same tract of land was before you just two years ago and the City Council denied zoning for 'OW' Office Warehouse. Public services are available, water and sewer. Sewer isn't to the area yet, but will be coming fairly soon. This is recommended for low density residential; however, the actual density of this development will be within the range of low density. It is just that when we have duplex units, they count as medium density because of the style of development. However, as I pointed out in the staff report, some of our recommended goals and objectives are to provide a range of housing types and a mix of densities, so this does conform in that manner with it. Therefore, staff has recommended approval, subject to platting within 1 year and subject to the Protective Overlay, which included all of the conditions requested by Willowbend with the exception of Restrictive Covenants. I will stand for questions."

**GAROFALO** "Are there any questions? I don't think so. All right, we will hear from the applicant or agent."

**RUSS EWY**, "I am with the Baughman Company, agent for the applicant. A lot of you probably were around two years when this was up for Office Warehouse zoning and spent six months discussing that particular zoning case. I had the opportunity this morning to review the minutes of three or four Planning Commission meetings on that topic, and I think what you see before you represents a good faith effort by the applicant to meet the concerns, not only their investments concerns, but also the concerns that were enumerated by various members of the Willowbend community. So, I will stand for questions."

**LOPEZ** "Are you in agreement with all of the conditions?"

**EWY** "Yes. We volunteered those conditions."

**GAROFALO** "Are there any other questions of the applicant's agent? Guess not. Thank you. Is there anyone else to speak in favor of this application? Are you the applicant?"

**MAN FROM THE AUDIENCE** "No."

**GAROFALO** "Okay. Come forward and give your name."

**DAVID BABBISH** "I am the President of the Willowbend Homeowners' Association. I am here to speak in favor of this zoning change this morning. I think more importantly, I am here to speak in favor of the process that brought us to this. Mr. Michaelis brought his proposal to the Willowbend Homeowners' Board and the Willowbend Homeowners' Board asked that the general community be invited to a similar meeting so that he could present the proposal to them. That was done the next week.

Out of that meeting, we came up with a committee of five so that we could more clearly define our differences and act on them and the next night, they voted on these seven principles and the morning after that, we faxed those to Mr. Michaelis, and the day after that, he faxed his agreement with those conditions. This is in the absence of any Citizen's Participation Organization and with the absence of the District Advisory Boards, which are still in formation. So I think that the message it brings is that citizen involvement and volunteering by the developer to bring the citizens in can be productive. When we do that, I am hopeful that it makes your job easier because you are only going to be dealing with those differences that might occur, rather than the whole subject.

It is my pleasure to speak for the Willowbend Homeowners' Association and approve the application. Are there any questions? Oh, I would also like to thank Dale Miller for being at our homeowners' board meeting and Donna for working with the technical developments on this. They were very cooperative, too. Thank you."

**GAROFALO** "Sir, do you realize that Item No. 4 on Page 2, the covenants of the neighborhood is not going to be included in the Overlay?"

**BOBBISH** "That is right. We have a letter from Mr. Michaelis that we are sure will cover that condition outside of this agreement."

**GAROFALO** "Thank you. Is there anyone else to speak in favor of this item? Is there anyone to speak in opposition? Seeing none, we will come back to the Commission."

**MOTION:** Having considered the factors as contained in Policy Statement No. 10; taking into consideration the staff findings The zoning, uses and character of the neighborhood: Willowbend borders the site to the south. The area to the east is a suburban single-family area with a range of housing types (conventional and manufactured homes). The area to the west is zoned for industrial use, but is vacant. Farther to the west along Rock Road, there is an oil service building and an oil well, and a small cemetery. The area to the north is vacant and agricultural land that is still outside the city limits. The suitability of the subject property for the uses to which it has been restricted: The property is currently vacant and could be developed as single family. Extent to which removal of the restrictions will detrimentally affect nearby property: The duplex uses are not expected to detrimentally affect the surrounding area. The suggested Protective Overlay should ensure compatibility with the area to the south. The length of time the subject property has remained vacant as zoned: The property has remained vacant since 1982 when the original application for "E" Light Industrial zoning that was filed, but not completed. More recently in 1998, an application for "OW" Office Warehouse was denied by the Wichita City Council. Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: The requested change in zoning classification is not in conformance with the Wichita Land Use Guide. However, as discussed earlier, it is in conformance with objectives and the strategy for encouraging a variety of housing types in a compatible manner with low -density residential development. Impact of the proposed development on community facilities: The projected impact of the zoning change is to increase the total number of dwelling units in the area by approximately 30 units. This is a small increase that should not impact community facilities significantly. Opposition or support of neighborhood residents: The residents of Willow bend have opposed efforts for industrial or office warehouse use. The homeowners association has met with the applicant to determine conditions that would be acceptable for duplex use by both parties.) I move that we recommend to the governing body that the request be approved, subject to the following:

1. Building height shall be limited to 25 feet.
2. The front of each unit shall be of brick construction from ground level to a height of 4 feet as a minimum.
3. Two 3" caliper trees will be planted and maintained in the rear setback of each lot with a residential building.
4. Rooflines shall be alternated to be hipped, gabled and Dutch hipped, and the roofing material shall be Heritage II, 30 year or equivalent.
5. No wooden or chain link fences shall be allowed on the property.
6. None of the Conditional Uses listed in Wichita-Sedgwick County Unified Zoning code Article III, Section III-B,c, October 28, 1999, shall be permitted on the property.

**MCKAY** moved, **LOPEZ** seconded the motion, and it carried unanimously. Michaelis abstained (10-0-1).

8. **CU 565** - Dean and Pauline Nicholson (Owner/Applicant); Divine Towers International and Ferris Consulting c/o Greg Ferris (Agents) request a Conditional Use to permit a commercial communication tower on property described as:

A tract of land in the Southwest Quarter of Section 27, Township 26 South, Range 1 West of the 6<sup>th</sup> P.M., Sedgwick County, Kansas, described as follows: Commencing at the NW Corner of said SW1/4; thence S 00 degrees W for a distance of 675.00 feet; thence S 90 degrees E for a distance of 1307.41 feet; thence N 00 degrees E for a distance of 437.13 feet to the point of beginning; thence N 90 degrees W for a distance of 25 feet; thence N 00 degrees E for a distance of 50 feet; thence S 90 degrees E for a distance of 50 feet; thence S 00 degrees W for a distance of 50 feet; thence N 90 degrees W for a distance of 25 feet; to the point of beginning, Sedgwick County, Kansas. Generally located approximately 175 feet south of K-96 and 1/4 mile east of Ridge Road.

**SCOTT KNEBEL**, Planning staff, pointed out land use and zoning; and showed slides of the general area. He reviewed the following staff report:

**BACKGROUND:** The applicant is seeking a Conditional Use to permit the construction of a 140-foot commercial communications monopole for use by AT&T Wireless Services. The monopole will be sited on a 2,500 square foot area located approximately 175 feet south of K-96 and ¼ mile east of Ridge. Access to the site is to be from Ridge. The applicant's site plan (attached) depicts a 50-foot by 50-foot compound enclosed by a chain link fence. Within the enclosure would be the monopole and an equipment shelter. The monopole would be constructed so as to be able to accommodate up to three carriers.

The site is entirely surrounded by undeveloped property. The nearest developed properties are agriculture-related residential properties located approximately 700 feet to the east, 400 feet to the south, and ¼ mile to the west. All properties in the vicinity of the site are zoned "SF-20" Single Family Residential.

The applicant's justification for the request (attached) indicates this site is necessary for AT&T Wireless Services to provide continuous coverage northwest of the city around K-96 and Ridge. The closest existing towers are 2.3 miles and 2.0 miles away, and AT&T Wireless Services is co-locating on those towers. Since this is a largely undeveloped area, there are not any buildings of sufficient height which might provide alternative support structures on which to locate antennas. The applicant states that the 140-foot height is needed to achieve coverage targets. According to a letter from an aviation consultant, this site complies with the Federal Aviation Administration hazard standards, and should not be a hazard for aircraft.

There currently is a commercial communication tower study ongoing by the city and county. The study is focusing on possible alternatives to the construction of new tower structures. Due to the undeveloped nature of the property in the vicinity of this site, none of the study's alternatives to new towers is likely to be applicable in this case. The study also proposes design guidelines for new commercial communication towers, and staff's recommended conditions of approval regarding landscaping, glare reduction, and lighting are intended to bring the proposed new tower into general compliance with the proposed design guidelines.

In addition, staff recommends approving the tower for only 120 feet to lessen its negative visual impact. Coverage plots submitted by the applicant (attached) apparently indicate that 120 feet will provide sufficient coverage to currently developed areas. Even with a 140 foot tower, additional towers likely will be needed to the west and southwest of the site in the future to provide coverage to properties in the area as they develop. To preserve future options for additional users at this site, however, staff also recommends that the tower be designed and constructed to permit future height extensions of up to 30 feet.

**CASE HISTORY:** The site is unplatted.

**ADJACENT ZONING AND LAND USE:**

NORTH: "SF-20" Agriculture  
SOUTH: "SF-20" Agriculture  
EAST: "SF-20" Agriculture  
WEST: "SF-20" Agriculture

**PUBLIC SERVICES:** No municipally supplied public services are required. The site has access to Ridge, a four-lane arterial with 1997 traffic volumes of approximately 9,400 vehicles per day. The proposed 2030 Transportation Plan estimates that traffic volumes on Ridge will increase to 14,000 vehicles per day.

**CONFORMANCE TO PLANS/POLICIES:** The Land Use Guide of the Comprehensive Plan identifies this area as appropriate for "Agricultural" development. However, the proposed update to the Comprehensive Plan identifies this area as appropriate for "Low Density Residential" development and identifies property immediately to the west as appropriate for "Commercial" development and property immediately to the east as appropriate for "Industrial" development. Given the updated indications of appropriate future development, this site generally conforms to the updated Land Use Guide of the Comprehensive Plan. The plan does not speak specifically to telephone or cellular phone service, however there is a statement indicating the need to provide the highest quality utility services to the public at a reasonable cost. Section III.D.6.g of the zoning code lists five conditions that commercial communications towers are subject to meeting: unobtrusive paint scheme, no nighttime lighting of the tower except for aircraft warning lighting, no advertising, demonstrate that an effort has been made to co-locate on an existing tower, and willingness to provide space for other communication towers.

**RECOMMENDATION:** Based upon information available prior to the public hearings, planning staff recommends that the request be APPROVED, subject to the following conditions:

- A. All requirements of Section III.D.6.g. of the Unified Zoning Code shall be met.
- B. The site shall be developed in general conformance with the approved site plan. All improvements shall be completed before the facility becomes operational.
- C. A landscape plan shall be submitted for approval by the Director of Planning which provides densely planted evergreen trees around the chain link enclosure to lessen the negative visual impact of the site.
- D. The support structure shall be a "monopole" design that is silver or gray or a similar unobtrusive color with a matte finish to minimize glare.
- E. There shall be no lighting of or on the monopole.
- F. The monopole shall not exceed 120 feet in height to lessen its negative visual impact.
- G. The monopole and its foundation shall be designed and constructed in such a manner that permits future height

extensions of up to 30 feet.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: All of the land adjacent to the site is currently developed agriculture-related single family residential uses and is zoned "SF-20" Single Family Residential. The character of the land is agricultural, with urban development approaching from the south.
2. The suitability of the subject property for the uses to which it has been restricted: The site is zoned "SF-20" Single-family Residential. Commercial communication towers are uses that may be permitted, subject to conditions, in this district. The site could be developed with single family residences (at very low density due to the current lack of public water and sewer service) if a commercial communications tower is not constructed.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The site is currently undeveloped. The closest developed properties are located approximately 700 feet to the east, 400 feet to the south, and ¼ mile to the west. No evidence has been presented to date that the construction of a monopole will detrimentally affect nearby property to a greater degree than will the development of nearby property with commercial and industrial uses, which is indicated by the Comprehensive Plan as being the likely future development in the area. The only impact to be noted at the time this report was prepared is the visual impact of a monopole.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan: The Land Use Guide of the Comprehensive Plan identifies this area as appropriate for "Agricultural" development. However, the proposed update to the Comprehensive Plan identifies this area as appropriate for "Low Density Residential" development and identifies property immediately to the west as appropriate for "Commercial" development and property immediately to the east as appropriate for "Industrial" development. Given the updated indications of appropriate future development, this site generally conforms to the updated Land Use Guide of the Comprehensive Plan. The plan does not speak specifically to telephone or cellular phone service, however there is a statement indicating the need to provide the highest quality utility services to the public at a reasonable cost.
5. Impact of the proposed development on community facilities: No impacts have been identified as municipally supplied services are not required.

**KNEBEL** "This is another Conditional Use for a commercial communication tower, located in 'SF-20' zoning. This site is located approximately 175 feet south of K-96 and a quarter mile east of Ridge Road. The site plan submitted by the applicant shows that the tower would be enclosed in a 50 x 50 foot compound with a chain link fence. The tower would be a monopole and would be constructed to handle up to three carriers. The surrounding area is undeveloped agricultural land.

The applicant has requested this site to provide coverage northwest of the City along K-96 and along the developing Ridge Road area. The closest towers are over two miles away and the applicant will have antennas on both of those existing facilities. Like the last application, staff has recommended some conditions of approval regarding landscaping and glare reduction and lighting and also lessening the height with a height extension. I have spoken with the applicant there again, going to request the height that they had originally asked for, which is 140 feet.

Regarding the Comprehensive Plan, this is in an area that is shown as agricultural in the current Comprehensive Plan. In the proposed Comprehensive Plan, it is shown in an area that is shown as low density residential, however, it is shown with commercial to the west and industrial to the east, so it is an area that I think probably has the potential for some either industrial or commercial development in the future. The conditions of approval are essentially as the last case you heard a few minutes ago, so I won't go through those. I am available for any questions."

**GAROFALO** "Are there any questions? None. We will hear from the applicant, then."

**GREG FERRIS** "Mr. Chair, members of the Planning Commission, I will be very brief. I represent AT&T Wireless and Divine Towers International. We are proposing this tower. Once again, this is an area that we had submitted several weeks ago. Staff had asked us to take this a little closer to the highway. We were in this area over here (indicating). There were some other flood plain issues and we were able to accommodate a location closer to the highway. We believe that this is an excellent site, and if you think about it, as you drive through an intersection on one of the Interstates and see the high light standards, this would have a similar appearance and in fact, since it would be at ground level, it might be even shorter than some of them close to areas that you might be familiar with.

So we believe that 140 foot is appropriate for several reasons. First of all, it does meet our RF criteria. Second, staff's recommendation of 120 to make it 30 foot expandable, FAA will only allow us to go to 140 foot in this area. If I built a 120 foot tower, subsequent to that, I could come in and add 20 foot to that with just getting a building permit under the current ordinances and what is proposed as well, so we believe that, again, this is a newly developing area, and there will be a demand for cell service in this area. It provides the most opportunity for co-location at 140 feet and really has no disadvantage since we could do that basically by right of staff approval to go up that additional 20 foot.

So we would ask you to concur with all of the findings and the recommendations of staff, with the exception of the 120-foot height. We would like it to be 140. If you do not, don't ask us to make it 30-foot accessible because they won't even allow us to do that from the standpoint of the FAA. I would be glad to answer any questions you might have."

**GAROFALO** "Are there any questions of Mr. Ferris? No questions. Is there anyone else to speak in approval of this application? Is there anyone to speak in opposition? Okay, we will take it back to the Commission, then."

**MOTION:** Having considered the facotrs as contained in Policy Statement No. 10; taking into consideration the staff findings (The zoning, uses and character of the neighborhood: All of the land adjacent to the site is currently developed agriculture-related single family residential uses and is zoned "SF-20" Single Family Residential. The character of the land is agricultural, with urban development approaching from the south. The suitability of the subject property for the uses to which it has been restricted: The site is zoned "SF-20" Single-family Residential. Commercial communication towers are uses that may be permitted, subject to conditions, in this district. The site could be developed with single family residences (at very low density due to the current lack of public water and sewer service) if a commercial communications tower is not constructed. Extent to which removal of the restrictions will detrimentally affect nearby property: The site is currently undeveloped. The closest developed properties are located approximately 700 feet to the east, 400 feet to the south, and ¼ mile to the west. No evidence has been presented to date that the construction of a monopole will detrimentally affect nearby property to a greater degree than will the development of nearby property with commercial and industrial uses, which is indicated by the Comprehensive Plan as being the likely future development in the area. The only impact to be noted at the time this report was prepared is the visual impact of a monopole. Conformance of the requested change to the adopted or recognized Comprehensive Plan: The Land Use Guide of the Comprehensive Plan identifies this area as appropriate for "Agricultural" development. However, the proposed update to the Comprehensive Plan identifies his area as appropriate for "Low Density Residential" development and identifies property immediately to the west as appropriate for "Commercial" development and property immediately to the east as appropriate for "Industrial" development. Given the updated indications of appropriate future development, this site generally conforms to the updated Land Use Guide of the Comprehensive Plan. The plan does not speak specifically to telephone or cellular phone service, however there is a statement indicating the need to provide the highest quality utility services to the public at a reasonable cost. Impact of the proposed development on community facilities: No impacts have been identified as municipally supplied services are not required.) I move that we recommend to the governing body that the request be approved, subject to the following:

- A. All requirements of Section III.D.6.g. of the Unified Zoning Code shall be met.
- B. The site shall be developed in general conformance with the approved site plan. All improvements shall be completed before the facility becomes operational.
- C. A landscape plan shall be submitted for approval by the Director of Planning which provides densely planted evergreen trees around the chain link enclosure to lessen the negative visual impact of the site.
- D. The support structure shall be a "monopole" design that is silver or gray or a similar unobtrusive color with a matte finish to minimize glare.
- E. There shall be no lighting of or on the monopole.
- F. The monopole shall not exceed 140 feet in height.

**WARREN** moved, **HENTZEN** seconded the motion,  
and it carried unanimously (11-0).

- 
9. **Case No. Z-3354** - Pearl L. Smith (owner), Edward M. Smith (applicant) Professional Engineering Consultants (PEC) c/o Gary Wiley (agent), request zone change from "MF-29" Multi-Family Residential to "LC" Limited Commercial on property described as:

Lots 2, 4 and 6, Block 2 Gillispie Grove Addition, Sedgwick County, Kansas. Generally located on the southeast corner of Orient Boulevard and Euclid Street.

**BARRY CARROLL**, Planning staff, pointed out land use and zoning; and showed slides of the general area. He reviewed the following staff report:

**BACKGROUND:** The applicant indicates that he operates a carpet business, the Carpet Smith, at 1929 Orient Boulevard which is located north of the application area and zoned "LC" Limited Commercial. The applicant is requesting approval of "LC" Limited Commercial zoning on 0.42 acres of platted property currently zoned "MF-29" Multi-Family Residential. The application area is a rectangular shaped parcel and is located at the southeast corner of the intersection of Orient Boulevard and Euclid (see map).

Merton Avenue, which is vacated, is located just south of the applicant's business, is included in this application. Euclid Street is located on the west, apartments are located to the south and an alley is located on the eastern edge of the property. [There is a single-family dwelling and garage currently in the application area.] The applicant owns property north of the vacated Merton Avenue, that is zoned "LC" Limited Commercial and the site of the current business. The property south of the

application area is zoned "MF-29," the property east is "MF-29" and the property to the west is also "MF-29." The "MF-29" areas have a mixture of single and multiple family residential uses. Access to the proposed site is currently from the north via Orient Boulevard and west from Euclid via an existing curb cut (what was once Merton Avenue).

The existing business is a cinder block building located north of the application area. Inspection of the site revealed that the site is in need of repair and general cleanup. The site had discarded carpet and inoperable vehicles north and south of the building. From staff's inspection, it is not clear to staff whether the business is currently operating or not. The applicant has not submitted a site plan for review. Consequently, staff is not clear on the exact nature of the applicant's expansion plans.

Lighting for the proposed facility is to be reflected away from any adjoining residential uses per zoning ordinance. Currently the parking lot on the business site is unpaved. Should the zone change be granted, the parking lot would need to be paved per zoning code requirements.

The Landscaping Code requires that the site be developed with appropriate screening. Per the zoning code, a screening fence will be required along the south property line. The parking lot will need to be screened. Buffer plantings will also have to be placed along the south property line. Landscaped street yard plantings will be required along Orient Boulevard and Euclid. As part of the rezoning process, the applicant will need to submit a proposed Landscaping Plan.

**CASE HISTORY:** The property was platted in 1910 as part of the Gillespie Grove Addition, Block 2.

**ADJACENT ZONING AND LAND USE:**

NORTH:	"LC" Limited Commercial	Business
EAST:	"MF-29" Multiple-Family Residential	Multi-Family Residential
SOUTH:	"MF-29" Multiple-Family Residential	Multi-Family Residential
WEST:	"MF-29" Multiple-Family Residential	Single-Family Residential

**PUBLIC SERVICES:** The site has access from Orient Boulevard and Euclid Street.

Orient Boulevard is a paved two-lane collector street; Euclid is a paved two-lane residential street. Traffic volumes are projected to be similar to small, low volume retail businesses. Water and sewer services are available.

**CONFORMANCE TO PLANS/POLICIES:** The Land Use Guide of the Comprehensive Plan identifies the application area as "medium density residential." There are industrial uses north, across the railroad tracks from the application area. The plan contains an objective stating: "Develop future/retail commercial areas which complement existing commercial activities, provide convenient access to the public and minimize detrimental impacts to other adjacent land uses." Also, the MAPC has an unofficial policy of approving zone changes for existing businesses.

**RECOMMENDATION:** Based on the information available prior to the public hearing, MAPD staff recommends the application be APPROVED, subject to platting and the following conditions of a Protective Overlay. (Access to the application area will be from Euclid via the existing curb cut into the vacated Merton Avenue). There will be no additional access to the three lots in order to maintain access control through the replatting process.)

1. Signs shall be limited to those permitted in the "NR" Neighborhood Retail District. No building advertising signs shall be permitted along the west, south or east face of any building.
2. The following uses shall not be permitted: adult entertainment establishment, group residence, group home, recycling collection station, convenience store, restaurant with drive-in or drive-thru facilities, service stations and vehicle repair;
3. The site shall be landscaped and screened in conformance with the City's ordinance requirements for new construction and substantial additions and or remodeling.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: Most of the neighborhood is zoned "MF-29" Multi-Family Residential and the adjacent business to the north is zoned "LC" Limited Commercial. The character of the neighborhood is one of mixed uses with industrial located to the north of Orient Boulevard, single-family homes to the west and east and a four-plex located to the south. South of the four-plex are other other single-family homes.
2. The suitability of the subject property for the uses to which it has been restricted: The purpose of the "MF-29" Multi-Family district is to accommodate high-density, multi-family residential development and complementary land uses. The site could be developed with uses permitted in the "MF-29" district.
3. Extent to which removal of the restrictions will detrimentally affect nearby property. The adjacent properties that are zoned "MF-29" and permit single-family, duplex, multi-family and assisted living uses. A variety of uses are already permitted on the property that is currently zoned "LC" Limited Commercial. Minimal detrimental effects are anticipated for the proposed expanded "LC" use due to the Protective Overlay recommended for this request.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: The request is consistent with the objective stating: "Develop future/retail commercial areas which complement existing

commercial activities, provide convenient access to the public and minimize detrimental impacts to other adjacent land uses" with the Protective Overlay provisions. The MAPC also has an unofficial policy of approving zone changes for existing businesses.

5. Impact of the proposed development on community facilities: The projected impact on community facilities is minimal and will generate little additional traffic. Traffic volumes are projected to be similar to other small, low volume retail businesses.

**CARROLL** "The applicant currently owns and operates a carpet business and is wanting to expand into the existing area. The applicant has not submitted a site plan for review to date. The Land Use guide of the Comprehensive Plan identifies the area as medium density residential.

Based on our review of this case, we are recommending approval with a Protective Overlay (P-O). The agent has indicated that he is in agreement with our recommendations with the exceptions of two items. The first one is that signs will be limited to those that would be permitted in the 'NR' Neighborhood Residential district. The Protective Overlay would not permit the following uses: adult entertainment establishment, group residence, group homes, recycling collection station convenience stores, restaurant with drive-in or drive-through facilities, service stations and vehicle repair. The site will be landscaped and screen in conformance with the City's Ordinance requirements. Mr. Wiley has requested that the area not be subject to platting, that it simply be a boundary shift, and in consultation with the Superintendent of Central Inspection, he was in agreement with that suggestion and we are supporting that as well.

Also, Mr. Wiley has agreed to the dedication of access control to Lots 2,4, and 6. Staff is supportive, since access already would be from the existing curb cut to the vacated alley. I would respond to any questions you might have."

**BARFIELD** "Where did you say access to this would be?"

**CARROLL** "It would be north from Orient (indicating) right there and then from the west, right off of Euclid. There is an existing curb cut where there was a Merton Avenue that has been vacated."

**GAROFALO** "On Page 2, the third paragraph raises some flags for me. I am kind of concerned about that. And from the pictures that you showed, it kind of looked like a mess. Maybe the applicant can respond to my concerns about that."

**CARROLL** "Okay, Gary Wiley is here."

**GAROFALO** "Okay. We will hear from him."

**GARY WILEY** "Mr. Chairman, Commissioners, I am here on behalf of the applicant. May I explain a little bit first, and then I will respond to your question, Frank.

The applicant has lived in the house or concrete building, house/office since 1953 as a young man. He is now there by himself as his Mother, Pearl Smith has passed away. He has been in the carpet business for 25-30 years and he is known as the 'carpet Smith'. He has been operating out of there. The place is definitely, as you can see, in need of repair and is too small for his business. He would like to build a new building for the carpet business and be able to clean this place up then, for his residence.

Like Barry said, we are in complete agreement with all of the conditions of approval of the Protective Overlay, the granting of the access control. I think that is about all I can add. I would be happy to answer any questions at this time."

**GAROFALO** "Then you are indicating to me then, Gary, that he is going to clean this area up?"

**WILEY** "That is correct. That old house that you saw in the picture, the one that faces Euclid would be removed and generally clean up the whole area if he can get this zoning."

**GAROFALO** "And build a new building for the business?"

**WILEY** "Yes, sir. It will be sufficient in size that he can park his vehicles inside and everything else. "

**BARFIELD** "So you are saying that he is going to build a new facility for the business and use it as a residence?"

**WILEY** "No. I think his residence will then be cleaned up on Orient Boulevard and he will stay there. That is already zoned Limited Commercial."

**HENTZEN** "Has this been a carpet installer?"

**WILEY** "Yes, but he will have a small amount of retail. He is planning on devoting; I think about 200 square feet of the new building for retail. Basically it is to show people samples. I think you probably have heard of him over the years, haven't you, Bud?"

**HENTZEN** "Yeah, I think I have. That's fine."



**GAROFALO** "Okay, are there any other questions of Gary? Thank you. Is there anyone else to speak in agreement or approval of this application? Is there anyone here who is in opposition?"

**CHRIS SPEIGHT** "I live at 1735 South Euclid Street. Right down the street from his property there. Right now, most of the stuff that is out there needs to be cleaned up. There are a lot of old cars and stuff. If he was to do something with that, it really wouldn't be that bad of an area. True enough, that house on the corner there is a pretty old house, but you know, there isn't much I can say about somebody else's house. That is somebody else's house. If that is all they can do, that is all they can do.

My concern is that I have a 5-year-old and a 16-year-old and we all grew up playing in the street, respecting cars that come up and down the street. I have worked at various places that have trucks and from what he is talking about, he is going to have trucks coming in there. I don't know how many times I have had truck drivers stop and ask me for directions somewhere, so my concern is the traffic that is going to be coming in through there. Like I said, I have a 5-year-old and I know of many families that live in that area, too. You have West High that is right up there. A lot of kids walk up Orient Street to go to West High. It isn't far from there. My son goes there. I have a 5, and 11 and a 16-year-old. My 11-year-old goes to Stanley, which is right in that area, too. My point is that there are a lot of kids walking around through there.

If his business is getting so big that he needs to build there, right around the corner there is Harry Street and that whole area back over there on the other side of the tracks, there is a railroad company around there and a lot of land around there that is for sale. I can't see why he can't leave that residential area alone and go on around over there where the business area actually is. To me, it just seems like, like I said, you've got a lot of kids that will be walking through there. With all of those trucks coming in and out of there, they will be coming in through the Orient and Euclid corner there, it kind of puts a damper on my kids and there are a lot of families in that area, too."

**GAROFALO** "Sir, could you point out exactly on the aerial map where you live?"

**SPEIGHT** (Indicating) "My house is approximately right here. It is like four houses off of this corner right here. Like I said there are a lot of kids walking up to West High around on up to Seneca and Sycamore. There is Stanley Elementary School right over this way. There are a lot of kids here because there are apartments right here. That is what my main concern is. There are a lot of businesses over here, and I don't see why he can't come on around the corner here. There is a lot of land right up through here that is for sale."

**GAROFALO** "Okay. Are there any other questions?"

**BARFIELD** "On your street and on Orient Boulevard, are there sidewalks provided there?"

**SPEIGHT** "Yes there is. On both sides of Euclid there are sidewalks?"

**BARFIELD** "And on Orient there are sidewalks, too?"

**SPEIGHT** "No, not on Orient."

**BARFIELD** "You mentioned the fact that you have been stopped several times by truckers asking for directions."

**SPEIGHT** "Not in that area. I am talking about in different areas, you know, how do I get to this place or that place."

**BARFIELD** "On Orient Boulevard also, from Seneca to Meridian, is that pretty much all residential?"

**SPEIGHT** "Mostly, yes. You have Kansas Can that is on the corner of Seneca, and that is like the back of it. You don't get trucks or anything in there. See, most of that north side in there is all basically empty for the railroad, and you have his place, you have an appliance store that doesn't have any traffic. I have never seen any. I don't know what street that is, it is up there by Vine and Morton, but as far as trucks going through there, you don't even see UPS running through there much."

**GARFIELD** "Are there any other questions? Thank you. Is there anyone else to speak in opposition? Step up to the podium, Ma'am, you have five minutes. Please state your name and address."

**LILLIAN M. MOORE** "You will have to forgive me because I get nervous. I live at 1720 South Euclid. I am the third house from Mr. Smith's. It is his house, an apartment and then I am the third house on the east side of the street. I oppose this because it will make our taxes go up and the value of our property go down. Then we have kids out there and it is dangerous. I have seen one child get hit down there on the boulevard with a pick-up truck because he ran out in front of it. He drove down out of my drive into it. That is about all I have to say."

**GAROFALO** "Okay, Ma'am. Are there any questions of Mrs. Moore? Thank you, Ma'am. Is there anyone else to speak in opposition? Ma'am?"

**ANNA FLETCHER** "I live at 1711, which is on the hill exactly across the street from where these trucks are going to be coming, wheeling around that corner. I live right there and I have a severely disabled husband. If we are going to have 50,000 trucks coming roaring in there at 6 o'clock in the morning, it is going to damage him. Besides that, the little kids will come roaring down this sidewalk in front of my house. I live up on this hill. They can't see these big, old trucks coming from the west, coming around there. I have seen them come down there and jump off of that sidewalk. There are little bitty kids down here

and they can't see those things coming. I have seen one go out there and go off of there and run into the side of a pick up and go clear over the top and land over half way across the street.

It is a really bad deal with that hill there if you are going to have a bunch of trucks going through there. Not only just for my benefit, but for the kids. It really is bad. I can't see tearing my hill down to help him because I have been there almost as long as he has, and besides that he is going to lower our tax value, our property value, if he does that. I am very much against putting a business in a multi-family area. There are too many kids in this area, kids playing there. They have no other place to play, so they are always playing in the street on bicycles, running up and down bouncing their ball or whatever. If that thing goes in there, we are going to have kids being killed right there in our street. I guess that is about all of the griping I can do."

**MCKAY** "Ma'am, how far east of this location is Aley Park?"

**FLETCHER** "It's at Martinson."

**MCKAY** "That is what, three blocks east of here?"

**FLETCHER** "Uh huh."

**MCKAY** "Okay, thank you."

Man from the audience "Aley Park is more than any three from that house."

**FLETCHER** "It sure is."

Man from the audience "But Stanley is right across the street and they could park, and that is 6 blocks straight up from Euclid."

**FLETCHER** "It is east of the school a little bit. The Aley Park thing you are talking about is a little bit east of Stanley School, which is on Martinson, I think."

**GAROFALO** "Are there any other questions? Thank you, Ma'am. Is there anyone else to speak in opposition? Okay, the applicant has two minutes for rebuttal."

**WILEY** "Mr. Smith has two employees besides himself. This is not a large operation. By the construction, I think he is talking of a 40 x 60 building, 2400 square feet that will not even all be devoted to the carpet business. It will not raise any taxes, as Mrs. Moore was afraid of. We don't intend to have a lot of truck traffic coming through the area. I would be happy to answer any questions."

**GAROFALO** "Gary, this is not intended as a retail shop, or is it?"

**WILEY** "He has 200 square feet, 10 x 20 for retail and it is basically to show carpet samples to people. It is not going to be a high traffic volume. And there are sidewalks on either side of Euclid as was indicated."

**WARNER** "He is going to take out that old tin building that you showed and the cars?"

**WILEY** "He is going to take out the garage and that old house and fix up the block building."

**WARNER** "That looks like it would be an improvement to me."

**WILEY** "We think so."

**BARFIELD** "What is the incentive for him to make this cleanup? I mean he has been there for a number of years from what I understand, and if he gets this zoning, what is his incentive?"

**WILEY** "His Mother has passed away a couple of years back and he now is going to go ahead and try to do his own business out of this location."

**BARFIELD** "I am not concerned about the business, I am concerned about the clean-up effort. What is the incentive if he hasn't done anything in all of this time?"

**WILEY** "Well, he is going to have to in order to build these new buildings and provide parking in there and everything. He won't do anything if he can't build, of course."

**WARREN** "Gary, are there other businesses up and down there?"

**WILEY** "Oh, yes. There is zoning map, here? Forward? Okay. You can see all of those spots of commercial going up to Harry there, the red areas. You have Rick's appliance. That was the Appliance Store that was being referenced earlier. You have a motorcycle shop that I think is just due east of the application area. That does vehicle and motorcycle repair."

**WARREN** "As I understand this, there won't be any outlet onto Euclid Street."

**WILEY** "There is one at the very north corner. (Indicating) Right here on the north edge of the vacated Merton Street. It is there today, it's a driveway and we would limit any commercial use for that road. Complete access control from that point back."

**GAROFALO** "Would whatever truck traffic that would move in that area, would it be off of Orient Boulevard, do you think?"

**WILEY** "Yes. That is the way it does today, I think. I have even visited with Chris a little bit about that. We are talking a three-man shop here."

**GAROFALO** "Okay. Are there any other questions? Okay, we will bring it back to the Commission then."

**MOTION:** Having considered the factors as contained in Policy Statement No. 10; taking into consideration the staff findings The zoning, uses and character of the neighborhood: Most of the neighborhood is zoned "MF-29" Multi-Family Residential and the adjacent business to the north is zoned "LC" Limited Commercial. The character of the neighborhood is one of mixed uses with industrial located to the north of Orient Boulevard, single-family homes to the west and east and a four-plex located to the south. South of the four-plex are other other single-family homes. The suitability of the subject property for the uses to which it has been restricted: The purpose of the "MF-29" Multi-Family district is to accommodate high-density, multi-family residential development and complementary land uses. The site could be developed with uses permitted in the "MF-29" district. Extent to which removal of the restrictions will detrimentally affect nearby property. The adjacent properties that are zoned "MF-29" and permit single-family, duplex, multi-family and assisted living uses. A variety of uses are already permitted on the property that is currently zoned "LC" Limited Commercial. Minimal detrimental effects are anticipated for the proposed expanded "LC" use due to the Protective Overlay recommended for this request. Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: The request is consistent with the objective stating: "Develop future/retail commercial areas which complement existing commercial activities, provide convenient access to the public and minimize detrimental impacts to other adjacent land uses" with the Protective Overlay provisions. The MAPC also has an unofficial policy of approving zone changes for existing businesses Impact of the proposed development on community facilities: The projected impact on community facilities is minimal and will generate little additional traffic. Traffic volumes are projected to be similar to other small, low volume retail businesses.) I move that we recommend to the governing body that the request be approved, subject to the following conditions:

1. Signs shall be limited to those permitted in the "NR" Neighborhood Retail District. No building advertising signs shall be permitted along the west, south or east face of any building;
2. The following uses shall not be permitted: adult entertainment establishment, group residence, group home, recycling collection station, convenience store, restaurant with drive-in or drivethru facilities, service stations and vehicle repair;
3. The site shall be landscaped and screened in conformance with the City's ordinance requirements for new construction and substantial additions and or remodeling;
4. There will be a "boundary shift" made at the time the site plan is submitted and no replatting will be required; and
5. There will be a dedication of access control for lots 2, 4 and 6.

**LOPEZ** moved, **WARNER** seconded the motion.

**WHEELER** "I have a question in terms of the three employees. Is that a limit, or with this approval could that number change?"

**KROUT** "As it stands now, that is not part of the Protective Overlay."

**PLATT** "I find this kind of an interesting case. I see some interesting similarities with one in relationship to Willowbend. There, the crucial activity was across the railroad tracks, which we supported some years ago and the City Council sent it back to us saying that we couldn't do that in this neighborhood. So, we finally approved multi-family residential. I have a hard time trying to decide if there is any difference between that location and this one. Certainly, the commercial along Orient is a factor. I guess the question in my mind is do we want to move it further south into the residential areas, or not. I would like to hear everybody else's comments on that."

**GAROFALO** "Is there anybody with comments? That kind of bothers me a little bit, too, that coming in to the residential area a little bit more. Then I look at what I saw in the pictures and what is described in here that it is kind of a mess now. I hope that there is a guarantee that this will improve. There are no guarantees, I guess. After he builds his building and what not, there won't be a bunch of cars and junk lying around. I think if it is done as Gary says it will be done, it will seem to improve the area somewhat. So I am kind of lost in between."

**JOHNSON** "I guess I haven't totally decided yet, but I kind of agree, I don't like what I see there, so if we deny the zoning, I guess it will just stay there and we won't change anything. So I guess I have to think that if somebody is going to go to the effort to rezone it and have plans to build a building, he is going to have to clean some of it up for parking, etc. So I think I will probably support it."

**MCKAY** "Marvin, if we zone this with what the applicant is asking for, aren't there rules against outside storage in Limited Commercial?"

**KROUT** "In Limited Commercial, 10% of the total floor area, and it has to be screened from residential, so they couldn't just zone this area and then use it for outdoor storage."

**MCKAY** "This is actually more restrictive than if you would leave it Single-Family."

**BARFIELD** "I also have a problem with it saying 'from staff inspection, it is not clear whether the business is actually operating or not'. And then there is no site plan or anything here. I still have some concerns here about the structure and what is going on there right now."

**GAROFALO** "Gary, do you want to respond to that? About no site plan. What is the plan?"

**WILEY** "I can guarantee you that the business is operating out of that location. It is in the phone book, even today. The site plan, the man wanted to try to get his zoning approved before he spent money to hire an architect. He has been in touch with an architect, in fact I provided the architect a bunch of the materials that he will need to do his site planning work with."

**GAROFALO** "Okay, thank you."

**HENTZEN** "I would like to ask Marvin, he would have to come in for a building permit and various inspections would have to be made, but does that include the removal of those broken down cars and things like that? In other words, is there existing Code that could be enforced?"

**KROUT** "I believe there is an existing Code that can be enforced. That is a separate issue from the zoning case. Really, I think that whether you approve it or deny it, I think Central Inspection could force the clean up of this property."

**HENTZEN** "I think that is right and proper. The question is, and we have talked about the clean up, and I think the question is should we rezone this to 'LC' as requested, or not. At this point, after going down there and looking at it, I am going to vote to approve it because I want it cleaned up."

**GAROFALO** "Is there any other discussion? If there is no further discussion, we can have a vote."

**MCKAY** "Does the motion include replatting?"

**KROUT** "No, we agreed that we understand that the building is not going to go I the alley, so you don't have to have that portion of the zoning lot platted."

**VOTE ON THE MOTION:** The motion carried with 11 votes in favor. There was no opposition. Osborne-Howes, Marnell and Carraher were not present.

-----

10. **Case No. CU-562** – Kenneth J. Cain (Owner/Applicant); P.E.C., PA c/o Gary Wiley (Agent) request a Conditional Use to allow sand and gravel extraction on property described as:

The East Half of the Southeast of Section 28, Township 29 South, Range 1 East of the 6<sup>th</sup> P.M., Sedgwick county, Kansas, except the East 40 feet and the South 550 feet thereof. Generally located north of 111<sup>th</sup> Street South and west of Hydraulic.

**SCOTT KNEBEL**, Planning staff, pointed out land use and zoning; and showed slides of the general area. He reviewed the following staff report:

**BACKGROUND:** The MAPC considered this case at their January 27, 2000 hearing and received information from a neighboring property owner regarding problems with the proposed sand and gravel extraction and its impact on the availability of ground water in the area. Therefore, the MAPC voted to defer the case for four weeks to allow time to follow up on the information provided by the neighboring property owner. At the February 24, 2000 MAPC hearing, a representative from the Kansas Division of Water Resources will appear before the MAPC to provide information ground water impacts of this case.

The applicant is requesting a Conditional Use to allow sand and gravel extraction on a 60.3-acre unplatted tract located north of 111<sup>th</sup> Street South and west of Hydraulic. The subject property is zoned "RR" Rural Residential.

The attached site plan shows that the proposed sand and gravel extraction operation would create a 40.2-acre lake. The operational plan shows a fence east and south of the operation, with the remainder of the site to be enclosed by an existing hedgerow. Storage of equipment and material would not be permitted within 100 feet of Hydraulic or 50 feet of any property

line. The redevelopment plan shows that the portion of the site east of the lake is proposed to be platted as 11 residential lots along a frontage road to Hydraulic.

The subject property is within a zone likely to have groundwater at some or all times within 10 feet of the ground surface elevation. Also, the most recent information pertaining to wetlands from the Sedgwick County Soil Conservation District and Soil Survey of Sedgwick County indicates that the site does not contain soil commonly associated with wetlands.

All of the property surrounding the site is zoned "RR" Rural Residential and is used for agriculture with farm-related single family residences. The Cowskin Creek and the Kansas Turnpike are located west of the property. The nearest residences not owned by the applicant are located approximately 300 feet north and 600 feet south of the site.

**CASE HISTORY :** The site is unplatted.

**ADJACENT ZONING AND LAND USE:**

NORTH: "RR"	Agriculture
SOUTH: "RR"	Agriculture
EAST: "RR"	Agriculture
WEST: "RR"	Agriculture

**PUBLIC SERVICES:** This site has access to Hydraulic, a two-lane paved section line road. Hydraulic has current traffic volumes of 725. The 2030 Transportation Plan estimates that these volumes will increase to 1,422. Municipal services are not available to serve this site. On-site water and sewer services will be required to serve this site due to its remote location.

**CONFORMANCE TO PLANS/POLICIES :** The Land Use Guide of the Wichita/Sedgwick County Comprehensive Plan identifies this area as appropriate for "Agriculture" (20 acre minimum lot size), which accommodates agricultural operations as well as other uses common in rural areas, such as sand and gravel extraction, that are no more offensive than normal agricultural uses. In the "Agriculture" category, subdivision into multiple lots less than 20 acres, as proposed in the redevelopment plan, generally should be developed through cluster provisions that reserve land for agricultural uses or open space, which is proposed by the applicant with 11 single family lots on 60.3 acre site with a 40.2 acre lake reserved for open space.

**RECOMMENDATION:** Based upon information available prior to the public hearings, planning staff recommends that the request be APPROVED, subject to the following conditions:

1. The applicant shall submit an operational plan for the area to be excavated. The extraction of sand on this site shall proceed in accordance with the operational plan approved by the MAPC. The perimeter of the lake excavation shall conform to the approximate size and shape indicated on the approved plan.
2. In order to assist in the enforcement of the operational plan for this extraction use, the applicant shall have a copy of the approved operational plan posted in the sand extraction office.
3. Adjacent to the east and south property lines of the application area, as indicated on the approved operational plan, a minimum 60-inch-high fence shall be constructed prior to the beginning of any extraction operation. The fence along the east and south property lines and the existing hedge row along the north, west, and south property lines shall be maintained at the locations depicted on the approved operational plan. Said fence shall be placed on steel posts, which are not less than 7 feet tall. The posts shall not be set more than 16 feet apart.

The fence shall be a minimum height of 60 inches and shall be of the following types of construction:

- A. A 48-inch-high or higher chain link fence with 3 or more strands of barbed wire; or
- B. A 48-inch-high solid metal or solid masonry fence with 3 or more strands of barbed wire; or
- C. A 48-inch-high or higher wood fence which may have cracks or openings not in excess of 5% of the area of such fence, with 3 or more strands of barbed wire.

The term "barbed wire" shall mean any twisted wire with barbs spaced a minimum of 4 inches apart and placed at the top of the fence and gate at an angle not to exceed 160° facing away from the excavation.

4. The earth and sand shall be extracted to at least a minimum depth of 6 feet below the normal water table, as determined by the Wichita-Sedgwick County Health Department.
5. To provide for bank stabilization and safety of future uses, the side slopes of the extraction shall be no more steep than five horizontal to one vertical.
6. Sufficient overburden material shall be retained in the area of extraction to grade and construct the banks so they are formed with overburden material rather than sand.
7. All of the area included within the fenced sand extraction operation shall be graded in accordance with a plan submitted to, and approved by, the Sedgwick County Bureau of Public Works.

8. The applicant shall submit a restrictive covenant to the Planning Department in a form satisfactory to the County's legal counsel, prior to the commencement of any sand extraction operation, providing that no foreign matter, such as rubbish, trees, car bodies, etc., shall be deposited on the application area or within the extraction area.
9. No commercial recreational activities, such as boating, fishing, skiing, etc., shall be permitted in the area, unless duly authorized under provisions of the county Zoning Resolution and amendments thereto.
10. All slopes shall have vegetative covering consisting of a perennial drought-resistant grass or combination of grasses which will permit the establishment of sod cover to help prevent erosion.
11. To minimize blowing soil in this area, overburden shall not be removed more than six months in advance of the lake being expanded into an area, unless the ground is covered within the next planting season with a perennial drought-resistant grass or combination of which will permit the establishment of sod cover to help prevent erosion.
12. The storage of equipment or stockpiling of sand is not permitted closer than 100 feet to any public right-of-way or closer than 50 feet to any property line.
13. Nothing in the approval of this request shall be construed to permit a contractor's material and equipment storage yard. Within 60 days after completion of the sand extraction operation, the land surrounding the lake shall be properly graded and planted with a vegetative cover. Also, all stockpiled sand, sand pumping and related equipment shall be removed from the subject site.
14. The approval of the Conditional Use is for a period not to exceed seven years from the date of approval by the MAPC and/or the Board of County Commissioners and subject operation is to cease after that period of time with all equipment and materials associated with the operation removed from the premises. As part of the required operational plan, the applicant shall divide the site into 2 distinct areas for the purpose of showing phased excavation over time. The plan would show which area was to be excavated and at what time.
15. Hours of operation for the sand extracting business shall be limited to 6:00 a.m. to sunset.
16. All on-site water and sewerage facilities shall be approved by and constructed to the standards of the Wichita-Sedgwick County Health Department.
17. Any water wells needed to operate the facility must comply with the Water Well Construction Standards contained in Article 30 of the Kansas Department of health and Environment rules and regulations.
18. The applicant shall make the site available to the Wichita-Sedgwick County Health Department for the installation and management of groundwater monitoring wells.
19. Any on-site storage of fuels or chemical must be approved by the Wichita Sedgwick County Health Department.
20. Drainage plan needs to be submitted and approved by the Bureau of Public Works prior to starting the sand and gravel extraction. All of the area included within the fenced sand extraction operation shall be graded in accordance with a plan submitted to, and approved by, the Sedgwick County Bureau of Public Works.
21. The applicant shall be responsible for maintaining all operational roads in a sand or graveled condition and shall apply water or other acceptable dust retardant to as to minimize blowing dust.
22. Any violation of conditions attached shall declare the conditional use permit null and void.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The site is zoned "RR" Rural Residential, which accommodates very large lot, single-family residential development in areas where a full range municipal facilities and services are not available. All of the property surrounding the site is zoned "RR" Rural Residential and is used for agriculture with farm-related single family residences. The Cowskin Creek and the Kansas Turnpike are located west of the property.
2. The suitability of the subject property for the uses to which it has been restricted: The site is currently used for agriculture and this use could continue given the exclusively agricultural character of the area.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Any detrimental affects should be minimized by the various setback requirements and operational restrictions required as conditions of approval.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The Land Use Guide of the Wichita/Sedgwick County Comprehensive Plan identifies this area as appropriate for "Agriculture" (20 acre minimum lot size), which accommodates agricultural operations as well as other uses common in rural areas, such as sand and gravel extraction, that are no more offensive than normal agricultural uses. In the "Agriculture" category, subdivision into multiple lots less than 20 acres, as proposed in the redevelopment plan,

generally should be developed through cluster provisions that reserve land for agricultural uses or open space, which is proposed by the applicant with 11 single family lots on 60.3 acre site with a 40.2 acre lake reserved for open space.

5. Impact of the proposed development on community facilities: The development of this property as a sand and gravel extraction operation should not have a significant impact on community facilities. This operation does not generate significant traffic. On-site water and sewer services will be required to serve this site due to its remote location.

**KNEBEL** "Four weeks ago, the MAPC considered this case and received information from a neighboring property owner regarding problems with the operation proposed and its impact upon the availability of groundwater in the area. At that meeting, the Commission decided to defer the case until this date to allow staff to contact an individual from the division of Water Resources, and Bruce Falk, from the Regional Office is here to provide you information on the groundwater impacts of this case. I will leave it to the Commission, if you are interested in seeing the presentation again."

**GAROFALO** "Is there anyone here on the Commission who was not here the last time we discussed this? I guess we were all here. Do we want to hear any more on the rundown on this case? Okay. I think we will hear from the water man, or the water boy."

**KNEBEL** "Okay."

**BRUCE FALK** "That's me, the water boy. I am the Water Commissioner from Stafford Kansas. We have a field office there. I believe the intent of my being here is just to explain our involvement in sand and gravel operations. Is that correct?"

**KNEBEL** "Yes."

**FALK** "In order to do that, I sort of need to start from the beginning and help you understand. It has been a very complicated issue."

**GAROFALO** "Mr. Falk, I think we also want to know, and hopefully you are going to tell us, what may be the impact of that on the groundwater and the amount of water used."

**FALK** "That probably would be the end result of this and it may not be as clear as you hope. The Water Appropriation Act was passed in 1945 and more or less says that all water in the State of Kansas belongs to the public. The Chief Engineer of my agency was appointed to oversee that. Through the water appropriation act, all uses of water in the State of Kansas, except for domestic use would need approval prior to use by the Chief Engineer.

In 1995, the Aggregate Association went to the Legislature and that law was changed, exempting sand and gravel operations from the Water Appropriation Act. In other words it said it was not a beneficial use of water, so would not require approval of the Chief Engineer, unless the Chief Engineer determined that it would cause a substantial adverse impact. They have gone so far as to say that every sand and gravel operation that is proposed would need to notify the Chief Engineer of his or her intent to start a pit and then when we receive that notice, we would respond back whether we consider it in an area that would have a substantial adverse impact. I am not sure, in this case, whether that has been done or not. I was not able to find that out today. That would be the first step of any person proposing to develop a sand and gravel operation.

Once we receive that notice, the Chief Engineer and his staff would evaluate the area and determine whether it was a substantial adverse impact or not."

**GAROFALO** "So who is responsible for contacting your people?"

**FALK** "The owner of the operation."

**GAROFALO** "So the applicant would have to submit something to your office?"

**FALK** "Yes, it essentially needs to be the name of the owner, the legal description and the size of the intended pit. In this particular case, if I read that right, it would be about 60 acres, which would use about 90-acre feet of water. It is a 40-acre lake? Okay. About 18 inches of evaporation occurs, and that is the part that needs to be permitted because if the ground was not opened up and groundwater was not exposed, that water would be available for other uses, but once it is opened up evaporation will occur and that needs to be accounted for. There is also, in the State of Kansas, the water protection fee is levied against industrial uses of water, so that fee would also be collected whether or not a permit is required."

**GAROFALO** "Explain a little bit more about the procedure. If it is notified, what does your office do?"

**FALK** "We would look at the area and determine whether the amount of natural recharge that occurs, the amount of water that has already been appropriated in the area, whether it is a problem area or it could be, and whether the area could handle any more diversions of water."

**GAROFALO** "And you do this by some sort of testing, I presume?"

**FALK** "That is correct. We have records of all of the diversions except for domestic use of everybody that already has a water right. Our objective is to be sure that people with existing water rights are not harmed."

**GAROFALO** "If you say that there is an adverse effect on the area, a permit probably would not be issued."

**FALK** "Well, it still could be, but another existing water right would have to be bought and taken out of service, equivalent to the amount that is needed for the sand and gravel operation. They would have to work with existing water rights in order to get it permitted."

**WARREN** "What I am hearing then, the fact that you have been called by staff here and advised of this, wouldn't, in itself, trigger your going ahead and making these evaluations, or you are saying these triggering mechanisms must come from of the applicant?"

**FALK** "That's right."

**WARREN** "So you are not prepared now to give us any kind of insights?"

**FALK** "No. It has not been reviewed by the Chief Engineer, to my knowledge."

**WARREN** "So your appearance here now is just to tell us that we have some legwork to do before we can get those evaluations."

**FALK** "That is correct."

**KROUT** "There was some testimony at the last meeting about the rights that have been appropriated in this area and a history of this particular tract. Did you get to review that?"

**FALK** "Yes. It is true that there was an irrigation permit applied for at that location. That was denied and it was based on safe yield and by that we draw a circle 2 miles in all directions around the proposed well, in that case and add up all of the water rights that are already there and if they exceed what nature puts back in the aquifer in that circle during a years' time, we consider that exceeding safe yield and the application was denied."

Sand and gravel pits are a little bit different, because when a well is pumping, it causes a cone of depression. It is pumping water at a high volume during the summer months usually, that could spread out and affect other wells where a sand and gravel operation uses water, but it does not create a cone of depression and it is a steady evaporation over an entire year rather than concentrated just during the irrigation season. So it is looked at a little differently."

**KROUT** "I know that no one has filed an application, but understanding the amount of appropriation that was requested and denied for irrigation and the differences, and now we have a 40-acre lake that is proposed and the impacts that it would have, can you give the Planning Commission any idea how your agency is going to look at that? Are they very different in nature in terms of what their impact is going to be? Can you tell us whether or not this is likely to be approved or not?"

**FALK** "It is very difficult at this time without looking at all of the uses of water in the area, and to further complicate things, the Chief Engineer and the Aggregate Association have been working together to come up with a new set of rules and regulations that will govern sand and gravel operations. It is only draft at this point what is proposed. Every part of the state that has 18 inches of evaporation or more would be considered substantial adverse impact and sand and gravel operations under those conditions would be required to be permitted."

As you probably know, as you move west through the state, the evaporation increases and really, it is just about east of Wichita where 18 inches begins. So if that regulation goes into effect, it would be slightly east of Wichita, and all of Western Kansas would be considered a substantial adverse impact."

**WARNER** "If that is the case, he doesn't need to be permitted here? Is that what you said?"

**FALK** "If his intent to develop a pit is processed under that proposed rule and regulation, then he would be required to have a water right and he may be able to get that by buying another water right that is already there and taking it out of service."

**WARNER** "Is it standard procedure to get your zoning and whatever before you know whether or not you can be approved?"

**FALK** "I have to be honest, this is the first time I have worked the two together at any time. In that proposed rule and regulation for existing pits would be grandfathered in if they can provide us with the documentation that they have met all of the zoning criteria."

In this case I am not in a proposal and I am not quite sure how that works, whether you place that as a condition on your part or what. Our permits normally say, if we give somebody a water right, it says it does not authorize you to trespass, it doesn't authorize you to do any of the other things other than 'here is a water right'."

**KROUT** "But you don't require a local zoning approval before you would review a request for water rights?"

**FALK** "No."



**HENTZEN** "I have two questions. One is a 40-acre lake that loses 18 inches of water per year. What if you pumped water and irrigated that 40 acres, would you use that much water or less?"

**FALK** "I would need my calculator to figure that, but normally we allow 18 inches of water in this part of the state as a maximum amount for irrigation, so it should be about equivalent."

**HENTZEN** "So it should be about equivalent, okay. The other question is, and maybe you just alluded to it, but have you had to turn down sand pits in this county, based on your permitting system?"

**FALK** "No, not at this point. Most that we have encountered were directly after the new legislation, which said that it was not a beneficial use of water and no longer required permitting. It was not considered as a substantial adverse impact at that time. But it is probably the grayest area I am aware of in Water Appropriation Act. For example, if you were in Eastern Kansas, a sand and gravel operation would have to send a notice in, but if you were developing a pit and not commercially using the sand and gravel, if you were doing it for recreational use, it is not exempt. That is the way the legislature left it. I can't explain it."

**BARFIELD** "I was just going to ask if an applicant has had a permit denied over the past two or three years, what conditions would have to change from your point of view to have that overturned?"

**FALK** "If it was denied because the area was over appropriated, for instance if they needed 100 acre feet for their pit, and that is not the amount they need, I am just using that as an example, if you could find another water right nearby, an irrigation right for instance, that was for 100 acre feet and purchase that water right, you can purchase water rights and separate it from the land, and that is the amount that they need for the pit, and just put that water right out of service, then we would balance the system just kind of like a checking account more or less."

**WARREN** "Mr. Chair, because I think his testimony ultimately is going to be so crucial to this case, I would wonder how long do they need, once they have been given proper notice and then I think it would have to be based on the law as it stands today and not some future law that they are working on that isn't now approved, so I guess that is two questions."

**WARNER** "But it is not our position to request that, it is the applicant's."

**WARREN** "But I mean as soon as he gets an official request, how long, normally, from the date of that official request before he can make an advisement?"

**FALK** "Usually that is anywhere from 30 to 90 days."

**WARREN** "Now, is it your opinion that this new law that you are talking about is going to be effective in that period of time? Would that delay you from giving that advice?"

**FALK** "Well, the legislature, last year required us to put all of our policies into rules and regulations. They are scheduled to be submitted for public hearings in March. It will be up to our legal staff, we had a request in this case, whether it is processed with what we had before that or the new rules and regulations."

**WARREN** "You are not here to make a venture now?"

**FALK** "No, I am not."

**WARREN** "On which set of evaluations it is going to be compared to?"

**FALK** "No. That is the Chief Engineer's authority there."

**WARREN** "If they got a proper application then, do you think you could get a ruling on that now? Could we get a reasonable ruling within 60 or 90 days?"

**FALK** "Yes."

**WARREN** "But you don't know for sure what the criteria of that would be, really?"

**FALK** "No, and I do not know what the result of that really would be either."

**GAROFALO** "Are there any other questions of Mr. Falk? I am advised that since this is some new information on this item, that we may have to open this up to the applicant and then other speakers, too."

**MICHAELIS** "Marvin, If we did approve this zoning case based on a sandpit usage, and the applicant makes the proper applications for that permit, and then that permit is denied, what happens to the zoning? Does it stay there or does it go away?"

**KROUT** "The zoning stays there and then, for example, if he could later purchase the rights somewhere else, then he would be able to use it."

**MICHAELIS** "Okay, but that zoning would only be subsequent to him using it for a sandpit, is that correct?"

**KROUT** "Right."

**WARREN** "So what you are saying is that he could have the zoning but still couldn't go ahead and operate."

**FALK** "Right. It would be illegal to use the water without first supplying us that intent and complying with our rules and regs. I should clarify that. It would be illegal to expose groundwater. We have had other instances where we have a cease and desist order and they are still scraping sand off of the top but they are not exposing water. That is okay as far as we are concerned."

**WARREN** "Marvin, is the only consideration here now is the zoning?"

**GAROFALO** "Well, it is a Conditional Use permit."

**WARREN** "Well, zoning and Conditional Use, yeah."

**KROUT** "I don't think that we would have to exclude the impact of water use in your consideration."

**WARREN** "We couldn't evaluate that. We don't have the expertise on this board to evaluate that."

**KROUT** "Well, there has already been some testimony and you can decide that you are better off to leave that issue to the state and not take any of that into consideration, but I am also saying that I think you can take that issue into consideration."

**WARREN** "But that would certainly be subject to heavy questions as to our expertise in that field if we used that as grounds, if it went beyond us."

**KROUT** "That could be, but sometimes we sit around talking about traffic and none of us are traffic engineers either."

**GAROFALO** "Are there any other questions of Mr. Falk? Okay, thank you sir, and will you stand by in case we do have something else? Gary (Wiley), do you want to say anything at this point?"

**WILEY** "There are just a couple of things that I would like to clarify, and it may for Bruce's answers. It was my understanding, from Mr. Miller, who talked to somebody. I don't know whether it was you, Bruce, but somebody, that this was not in a water critical area. That based on that fact, does that have anything to play on this requested permit?"

**FALK** "It was after I talked to Mr. Miller that this proposed rule and regulation has been formulated with the Aggregate Association and the Chief Engineer, so this is new information. So I do apologize if I have mislead anybody."

**WILEY** "The only other thing I wanted to bring up is that we have done some investigations. At the time of the last hearing a couple of weeks ago, the existing water table there is 6 feet 4 inches. The groundwater. There has been cores run to soft shale, which would be the end of your sand-bearing water. That is 52 feet. So presently, there is some 46 feet of water sitting there already. We just don't think that this would have an impact in the surrounding area."

**GAROFALO** "Are there any questions of Mr. Wiley? No questions? Thank you, Gary. Is there anyone else to speak in support of this application besides the applicant?"

**M.S. MITCHELL** "Mr. Chairman, members of the Planning Commission I am not here necessarily to support this application. What I am here to do is to tell you that the law says that sandpit applications are not subject to an appropriation for water evaporation unless the Chief Engineer determines that evaporation from that area would cause a substantially adverse impact on the groundwater of the area, not just the adjacent property."

The Chief Engineer is attempting, with a new rule and regulation, which is not what Mr. Falk quoted to you, unless they have changed it recently, which would define 6 or 7 different elements to what substantially adverse means. The only legal definition or research into that term that has been made that I am aware of has been made by an attorney, Richard Beckman, researching Kansas's case law. He says substantial adverse impact on the area groundwater supply, as used in K.S.A. 82.a.734, which is the section of law that governs sandpit evaporation and amendments thereto mean exposing the groundwater table to evaporation that will cause a direct impairment to the groundwater or surface water right.

Direct impairment shall be defined to mean raising or lowering the groundwater table or raising or lowering stream flow in a manner which can be directly attributable to the operation of the sand and gravel pits. I don't believe there is any way, with groundwater as high as it is in this area that evaporation from any size sandpit would have an adverse effect on the water rights of adjacent property. What you are really doing is removing the sand and gravel, which in many cases constitutes 80% of the volume of what is below the surface and now have, instead of 20% water, you have 80% water.

The Arkansas River is very near this location. The groundwater direction of flow is east and southeast and sooner or later finds its way into that Arkansas River and is lost forever. So to judge the implication or to take an implication that evaporation from a groundwater area in this location would have an adverse effect on someone's water right, I think is really stretching it. I don't believe there is a satisfactory way of scientifically making that judgement; at least there has none been proposed in all of the discussions that have been going on over changing that law. The other thing that was said was that the law was changed in 1995. Up until 1993, evaporation was never considered as a beneficial use in water rights law.

In 1993, a law was passed that declared it being a beneficial use. In 1995, that section was repealed and K.S.A.82a.734, which I read part of to you, is current law, but it was a repeal of a law in 1993 from the time in 1945 when Kansas declared all of the water belonging to the state until 1993, evaporation was never considered as a beneficial use. Thank you."

**GAROFALO** "Are there any questions of Mr. Mitchell?"

**KROUT** "Can you give us your opinion as to whether or not this will have any adverse effect on the surrounding properties? I don't just mean in the technical definition of the State statute."

**MITCHELL** "Not being a technical definition, did you say? My opinion?"

**KROUT** "Right."

**MITCHELL** "It is my opinion that it would not have an adverse impact on the water rights of adjacent properties."

**GAROFALO** "Are there any other questions? Thank you. Is there anyone else to speak in support of this Conditional Use permit? Is there anyone who wants to speak in opposition?"

**FORREST BUTTS** "Mr. Chair and Commissioners. My address is Mulvane. My family and I have 5 wells within a quarter of a mile of this proposed sandpit. These people mentioned that the level is 6-1/2 feet now. The water table is way up there. If you take a real dry year when we are irrigating, the water table goes down considerably. In fact, we had a well a quarter of a mile west of this area that we had to put a battery of two down because the water was so low we couldn't pump it. That is what we are concerned about is our wells away from this area. Another thing is that the City of Derby, it was the El Paso Water Company hired a professional engineering firm and they contacted me and they are looking for water. They wanted more water and wanted to go check our wells. They are aware that they are going to have to buy existing water rights in order to get more wells. They have one well within this two-mile area of this proposed sandpit. I know these people want to get this in, but I would like for them to go someplace where they are not over appropriated already. This area right here is over appropriated by 500-acre feet right now. That is a lot of water.

This is our livelihood and for them to come down and take our water away from us is bad. Water is going to be the most important resource we have in the future and I want you to please take consideration of this. Thank you."

**GAROFALO** "Are there any questions? Thank you. Is there anyone else who wants to speak in opposition?"

**STEVE BUTTS** "I live at 2411 East 111<sup>th</sup> Street South. I would just like for you to get the Chief Engineer's opinion on this. We have had to get our water rights, and we have had to go through the process and that is mainly our concern here that our water stays safe. I think the Chief Engineer is the expert on whether this area, being appropriated, could have more safe yield. We are concerned with the safe yield. The way I understand what Bruce said, there will be no new water rights appropriated in that area. They would have to buy existing water rights to be able to appropriate water."

**GAROFALO** "If that is a question you have of him, we will have him come back up to respond to that. We probably need to hear that, too."

**STEVE BUTTS** "I just didn't quite understand whether you would not give any new water rights, but if they purchased water rights then they could go ahead with the sand plant. That is my question. I don't have anything else to say."

**GAROFALO** "Okay. Does anybody else have a question for Mr. Butts?"

**KROUT** "Does your opinion about the sand pit change, depending upon whether or not they have the right to use water or if they have to buy it?"

**STEVE BUTTS** "We are not against pumping sand. We are just concerned with the safe yield, and the City of Mulvane's wells are within 3 miles of here, and the City of Derby has two on 95<sup>th</sup> and Hillside within the 2-mile area and then they have four that are half a mile away from that. So we are not the only ones affected. This whole area is going to be affected, and it is already over appropriated. We are concerned with the safe yield. If they can get a water right and if the Chief Engineer says it is safe, we shouldn't have a problem with it."

**GAROFALO** "Are there any other questions?"

**BARFIELD** "Sir, I want to ask you, the previous denial, was that based on the fact that it was already over appropriated in that area?"

**STEVE BUTTS** "That is my opinion. The reason they denied it is that the area is already over appropriated and exceeds the safe yield."

**BARFIELD** "What date was that?"

**STEVE BUTTS** "I believe it was in 1993."

**GAROFALO** "Are there any other questions of Mr. Butts? Thank you. Is there anyone else that wants to speak in opposition?"

**DAN WALTON** "I am here to represent my Father. We farm a quarter directly across the intersection to the southeast of where this proposed pit is to be. Our water level dropped in August of this year to the point to where when we were all pumping hard, we were starting to pump air in our well. Since this area, as I understand it, is already appropriated up to its limit and possibly over the limit. I feel like we have to try to preserve the water we have. So, I am opposed to this sand pit site and would like to have your consideration."

**MICHAELIS** "I would just like to ask you the same question. If you were satisfied that there is enough water and the impact of this sandpit was not going to take away from your water, would you then be opposed to it? I am getting the feeling that the main worry here is that they are going to take away from your water."

**WALTON** "That is my concern."

**MICHAELIS** "Okay. Then if we can get somebody in here, and I don't think it is any of us, but if we can get somebody in here to satisfy that concern, then that concern goes away. Is that correct?"

**WALTON** "The water usage and preserving what we have is my major concern."

**HENTZEN** "I have a question of Mr. Falk. How far away would they be allowed to purchase water rights if that was the avenue they had to take? In other words, do they have to stay within a mile area or a two mile area or what?"

**FALK** "Normally that would be within a two mile area."

**HENTZEN** "Okay, thank you."

**KROUT** "Is it possible that they could acquire the water rights from two miles away in order to meet your requirements but it would still have an adverse effect on the nearest 5 wells in that area?"

**FALK** "Purchasing a water right within two miles is considered an offset and should not make the situation any worse than it is today."

**KROUT** "That is true in the general sense of that whole water shed, or whatever it is called, underground, but in terms of the immediate impact on adjacent property owners, is it possible that this could have an adverse effect on the adjoining property, but not an adverse effect on the overall water table basin."

**FALK** "I would agree with Mr. Mitchell in that case that most likely it would not. It is the regional thing that we look at in this particular case."

**KROUT** "It most likely would not have a local adverse impact?"

**FALK** "Right."

**KROUT** "And the other thing is, as part of your process, do you notify nearby property owners of when and how you are going through this process of evaluation?"

**FALK** "In a case where a new application for a water right is being filed, we notify everybody within one half mile."

**KROUT** "Would that be the case here?"

**FALK** "I am not sure if they just had to buy somebody else's water right to replace what they intend to use for the pit, that there would be any notice because there is not really any change to the system and should not impact anybody locally."

**KROUT** "But if they wanted to do it some other way, they would be notified, if they wanted to appropriate water some other way."

**FALK** "That is correct."

**PLATT** "How much does the water level in the ground vary from a wet year to a dry year?"

**FALK** "That varies considerably from one place to the other across the state and depending on the flow of the river, if it is close to a stream. There are so many variables there isn't a good answer unless you have a specific location, and if I had that information with me."

**GAROFALO** "Mr. Falk, do you recall what the question the second Mr. Butts was asking you? Do you recall?"

**FALK** "About the area being over appropriated?"

**GAROFALO** "Was that what it was?"

**STEVE BUTTS** (From the audience) "Yeah. If they aren't going to allow any new applications, will they have to purchase an existing application?"

**FALK** "Well, as I said earlier, the application they were talking about was denied because we drew the two-mile circle and within that circle, it was over-appropriated. Now, the neighbor could file an application and if you drew a new two-mile circle and the wells within it could be completely different. It could be different at the next couple of sections over. So the whole area is not closed, that particular location is over appropriated."

**STEVE BUTTS** (From audience) "Okay. So he could move and be in an unappropriated area, but get a water right."

**FALK** "That is correct. It could be possible to move somewhere else and possibly get another water right if a water right is required."

**GAROFALO** "I guess to clarify for me, because I don't know much about water except how to use it, from my understanding and maybe some of the others, this operation would have to get a permit to go ahead and make their lake?"

**FALK** "They have to file their intent to develop a pit with the Chief Engineer, who has the final authority over whether water is used or not and if the Chief Engineer says that that would have a substantial adverse impact, then it would have to get a water right. If he says no, there is not a substantial adverse impact, then a water right would not be required."

**GAROFALO** "Okay. So the applicant would be required to get a water right from someone else?"

**FALK** "Only if there is a substantial adverse impact and then the only way to get water is to take some other water that is already in use."

**GAROFALO** "Okay. Is there anyone else to speak in opposition? Okay, the agent has two minutes for rebuttal if you wish."

**WILEY** "I will be very brief. We will make our application to DWR before we start anything, that is for sure. We will let them decide what is required."

**WARREN** "Mr. Chair, could I ask him a question? I know this is a tough issue for all of us here. Gary, if we were to separate this and take zoning as one matter and then appropriateness of water usage as another, understanding that we don't have any expertise in that field, would that satisfy you? If we just decide if it is a proper place for the zoning?"

**WILEY** "Yes. Is it a proper place for the zoning is what I think you ought to be doing. We will get any necessary permits that are required before we break ground."

**MOTION:** Having considered the factors as contained in Policy Statement No. 10; taking into consideration the staff findings The zoning, uses and character of the neighborhood: The site is zoned "RR" Rural Residential, which accommodates very large lot, single-family residential development in areas where a full range municipal facilities and services are not available. All of the property surrounding the site is zoned "RR" Rural Residential and is used for agriculture with farm-related single family residences. The Cowskin Creek and the Kansas Turnpike are located west of the property. The suitability of the subject property for the uses to which it has been restricted: The site is currently used for agriculture and this use could continue given the exclusively agricultural character of the area. Extent to which removal of the restrictions will detrimentally affect nearby property: Any detrimental affects should be minimized by the various setback requirements and operational restrictions required as conditions of approval. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The Land Use Guide of the Wichita/Sedgwick County Comprehensive Plan identifies this area as appropriate for "Agriculture" (20 acre minimum lot size), which accommodates agricultural operations as well as other uses common in rural areas, such as sand and gravel extraction, that are no more offensive than normal agricultural uses. In the "Agriculture" category, subdivision into multiple lots less than 20 acres, as proposed in the redevelopment plan, generally should be developed through cluster provisions that reserve land for agricultural uses or open space, which is proposed by the applicant with 11 single family lots on 60.3 acre site with a 40.2 acre lake reserved for open space. Impact of the proposed development on community facilities: The development of this property as a sand and gravel extraction operation should not have a significant impact on community facilities. This operation does not generate significant traffic. On-site water and sewer services will be required to serve this site due to its remote location.) I move that we recommend to the governing body that the request be approved, subject to the following:

1. The applicant shall submit a operational plan for the area to be excavated. The extraction of sand on this site shall proceed in accordance with the operational plan approved by the MAPC. The perimeter of the lake excavation shall conform to the approximate size and shape indicated on the approved plan.
2. In order to assist in the enforcement of the operational plan for this extraction use, the applicant shall have a copy of the approved operational plan posted in the sand extraction office.

3. Adjacent to the east and south property lines of the application area, as indicated on the approved operational plan, a minimum 60-inch-high fence shall be constructed prior to the beginning of any extraction operation. The fence along the east and south property lines and the existing hedge row along the north, west, and south property lines shall be maintained at the locations depicted on the approved operational plan. Said fence shall be placed on steel posts, which are not less than 7 feet tall. The posts shall not be set more than 16 feet apart.

The fence shall be a minimum height of 60 inches and shall be of the following types of construction:

- A. A 48-inch-high or higher chain link fence with 3 or more strands of barbed wire; or
- B. A 48-inch-high solid metal or solid masonry fence with 3 or more strands of barbed wire; or
- C. A 48-inch-high or higher wood fence which may have cracks or openings not in excess of 5% of the area of such fence, with 3 or more strands of barbed wire.

The term "barbed wire" shall mean any twisted wire with barbs spaced a minimum of 4 inches apart and placed at the top of the fence and gate at an angle not to exceed 160° facing away from the excavation.

4. The earth and sand shall be extracted to at least a minimum depth of 6 feet below the normal water table, as determined by the Wichita-Sedgwick County Health Department.
5. To provide for bank stabilization and safety of future uses, the side slopes of the extraction shall be no more steep than five horizontal to one vertical.
6. Sufficient overburden material shall be retained in the area of extraction to grade and construct the banks so they are formed with overburden material rather than sand.
7. All of the area included within the fenced sand extraction operation shall be graded in accordance with a plan submitted to, and approved by, the Sedgwick County Bureau of Public Works.
8. The applicant shall submit a restrictive covenant to the Planning Department in a form satisfactory to the County's legal counsel, prior to the commencement of any sand extraction operation, providing that no foreign matter, such as rubbish, trees, car bodies, etc., shall be deposited on the application area or within the extraction area.
9. No commercial recreational activities, such as boating, fishing, skiing, etc., shall be permitted in the area, unless duly authorized under provisions of the county Zoning Resolution and amendments thereto.
10. All slopes shall have vegetative covering consisting of a perennial drought-resistant grass or combination of grasses which will permit the establishment of sod cover to help prevent erosion.
11. To minimize blowing soil in this area, overburden shall not be removed more than six months in advance of the lake being expanded into an area, unless the ground is covered within the next planting season with a perennial drought-resistant grass or combination of which will permit the establishment of sod cover to help prevent erosion.
12. The storage of equipment or stockpiling of sand is not permitted closer than 100 feet to any public right-of-way or closer than 50 feet to any property line.
13. Nothing in the approval of this request shall be construed to permit a contractor's material and equipment storage yard. Within 60 days after completion of the sand extraction operation, the land surrounding the lake shall be properly graded and planted with a vegetative cover. Also, all stockpiled sand, sand pumping and related equipment shall be removed from the subject site.
14. The approval of the Conditional Use is for a period not to exceed seven years from the date of approval by the MAPC and/or the Board of County Commissioners and subject operation is to cease after that period of time with all equipment and materials associated with the operation removed from the premises. As part of the required operational plan, the applicant shall divide the site into 2 distinct areas for the purpose of showing phased excavation over time. The plan would show which area was to be excavated and at what time.
15. Hours of operation for the sand extracting business shall be limited to 6:00 a.m. to sunset.
16. All on-site water and sewerage facilities shall be approved by and constructed to the standards of the Wichita-Sedgwick County Health Department.
17. Any water wells needed to operate the facility must comply with the Water Well Construction Standards contained in Article 30 of the Kansas Department of health and Environment rules and regulations.
18. The applicant shall make the site available to the Wichita-Sedgwick County Health Department for the installation and management of groundwater monitoring wells.

19. Any on-site storage of fuels or chemical must be approved by the Wichita Sedgwick County Health Department.
20. Drainage plan needs to be submitted and approved by the Bureau of Public Works prior to starting the sand and gravel extraction. All of the area included within the fenced sand extraction operation shall be graded in accordance with a plan submitted to, and approved by, the Sedgwick County Bureau of Public Works.
21. The applicant shall be responsible for maintaining all operational roads in a sand or graveled condition and shall apply water or other acceptable dust retardant to as to minimize blowing dust.
22. Any violation of conditions attached shall declare the conditional use permit null and void.

**MCKAY** moved, **MICHAELIS** seconded the motion.

**WHEELER** "I was called out of the room so I didn't hear all of the testimony and therefore I feel that it is appropriate that I not be included in this vote."

**GAROFALO** "Commissioner Wheeler will abstain from voting since she didn't hear all of the discussion. Is there any other discussion?"

**VOTE ON THE MOTION:** The motion carried with 10 votes in favor. There was no opposition. Wheeler abstained. Osborne-Howes, Marnell and Carraher were not present.

-----

11. **Case No. A-0011** - Unilateral annexation by the City of Wichita of property generally located 1/2 mile south of Kellogg and east and west of 143<sup>rd</sup> Street East (Phase II of A99-19).

**KROUT** "Commissioners, unless you have questions, we are bringing this back to you that you saw a couple of months ago. There was a 1200 acre annexation, but a portion of that area that was originally proposed to be annexed was not eligible to be annexed because of a typographical error that was identified, so we are having to go through the process, in fact twice more. You already did approve this once, we are just asking you to find again that this is consistent with the Comprehensive Plan."

**MOTION:** That the Metropolitan Area Planning Commission find the unilateral annexation compatible with the adopted Comprehensive Plan.

**HENTZEN** moved, **MCKAY** seconded the motion, and it carried unanimously (11-0).

-----

## 12. **Unified Work Program**

**JAMSHEED MEHTA** "This item calls for you to change hats. You have been the Planning Commission all along, and I would ask you to now consider yourselves members of the Metropolitan Planning Organization (MPO). Another hat you wear.

No action is necessary as part of this agenda item. It is informational only. This is the first draft of the Unified Work Program. It is an annual work program we have to prepare and submit to the State and Federal Highway and Federal Transit folks. While generally it used to be a 12-month or annual program beginning in July, ending in June the next year, this time around, we will be doing it for 18 months. The reason being that all along we thought we were helping the state by going along with their fiscal cycle, which began in July, but it turns out that they prefer us to go beginning January. In order to make it up instead of doing a 6 months program, we will do an 18-month program. We won't bring this back to you for another year and a half.

To give you an example of what this Unified Work Program document does, not only do we have a list of projects and programs that we will be working on over the next 18 months beginning in July, it also brings in Planning funds both from Federal Highway and Federal Transit. As an example, the fiscal year that began in July of 1999 and is continuing right now through to the end of June of 2000, we will be getting a little over \$500,000 of federal monies for a 20% match from the local. That pays for, essentially, a little over seven full-time equivalent planners and staff and computers and equipment and a lot of things that go along, in addition to some contractual services that we sometimes employ.

It is a very large document with a lot of detail. Some of it has to do with annual programs and you are familiar with what we generally do in the Transportation division. It also pays for part of the staffing of the Land Use and Research division. I will just draw your attention to some of the newer points. I will even guide you to the page number so you can follow along with that.

On Page 12, Item No. 10 'review the organizational structure of the MPO'. That has to do with the fact that maybe, at the end of this new census cycle, in about a month and a half, and within a year or two, we will be informed maybe, that our Metropolitan Planning boundaries have to cross over into part of Butler County, but not all of it. Maybe into the City of Andover. That means that we have to re-examine the way we have structured the MPO right now. The Planning Commission is the designated MPO. You have to make some kind of shift or variation in this organizational structure to propose how we are going to include an area, which is not represented on this board. That is a work item.

The next item, on the same page, Item No. 11 'public awareness and input into the planning process. It is a very brief statement but what we intend to do by the time we have revised this and by the time we get some feedback from state and federal agencies is that the MPO, as an MPO, every plan and program must have a public input component. And while you might think that that is already going on and we have enough public input, I might add, there are regulations that require the MPO to seek out certain population groups. Low income, minority groups to see their input at different phases of the planning process. They would like to see us embark on those kinds of activities of citizen input.

There are regulations that the US Department of Transportation reminds us that we need to develop an analytical capability so that we can assess what are the impacts of transportation on certain population groups. At the same time, what are the effects of distribution of transportation monies that we get from different sources as we build highways and streets? Now all of these I point out are under existing programs, but we haven't embarked on them and are being reminded that we need to look at these issues more seriously. They fall under what is called environmental justice. It is a term that is being bounced around a lot these days. The regulations have been in place for at least 5 or 6 years.

On the same page, Item No. 12, we anticipate being declared a non-attainment area for Ozone; that is air quality related, by the EPA in the near future. I know it is not going to be in this year because they look at the last three year's averages of what the Ozone levels have been. We are right at the point where if we go any further, we turn into a non-attainment area.

Under non-attainment, we will need to do transportation planning and project selection a little differently. Basically, you cannot build more capacity into a street or add more highway projects if it is found that by building more lanes or newer facilities, we are actually worsening, or not helping the air quality situation. So it is like having a budget that you can only have so much pollution in this area and your projects need to bring that pollution level down. If it is not helping that, that project moves off and is replaced by another one which can actually make a difference in the air quality. If we fall into this situation. This hasn't happened yet. What this work item is all about is that we have to work with our partners, in this case the EPA, KDOT, the highway folks, the transit folks, the city and county governments to streamline not only our internal working operation because we have to do modeling a little bit differently, we have to have different sets of data coming in from different sources and prepare for that, but to also streamline the decision making process."

**GAROFALO** "I have a question on that. If we reach that non-attainment point, would that just impact highways or would it also impact residential streets, new additional residential streets?"

**MEHTA** "It is primarily geared around the use of federal funds; however, adding residential streets or going along with the population increase by building new subdivisions isn't the culprit in this case, it is how we handle traffic once it is on the major thoroughfare system. In the models, they will already have inputted what the proposed or projected population increase is going to be."

**MCKAY** "On this air quality pertaining to the streets and things, I know that back when clean air and clean water act was passed and everybody did their research and testing and all of this, Wichita did theirs in Old Town, which has got probably the worst situation of everything. I know of some major cities that did theirs on the outskirts. Where I am coming from is because of the wind we have here today, when this Ozone problem occurs, is that a one-time test, or is that a test over a period of time or what?"

**MEHTA** "As we speak right now, there are two monitors that are continuously, for 24 hours taking air samples and reporting it into a computer system."

**MCKAY** "Where are they located?"

**MEHTA** "One is on the roof top of the Health Department on Ninth Street, right next to the highway and the KU Medical Center, and the other one is on a Health Department facility in Park City. Those are the two monitors. There is a third one to be started very soon by the state along the south county line just to make sure that if there is some migration of bad Ozone or those chemicals that lead to Ozone coming in from outside our county, and that is the dominant direction of the prevailing winds, then they can discount for what is coming into our area and we don't get to be losing our share of the air quality."

**MCKAY** "That is the reason why I made that statement. The two locations that they are presently are by the Interstate Highway. If you move half a mile further away, it is going to make a tremendous difference."

**MEHTA** "It would make a difference."

**MCKAY** "So where we located ours might not have been the smartest thing in the world. Even though we were trying to conform."

**MEHTA** "Coming from the aspect of the health and environment planning departments or KDHE and the EPA, in fact they think that you need more of these monitors at different locations to balance out the effect and you know that it is not concentrated in one place."

**KROUT** "Previously they did decide where the monitors would be."

**MCKAY** "When this first came out, the cities and towns themselves picked where these locations were."



**MEHTA** "And the one you are referring to has to do with our carbon monoxide monitor which is still there downtown near Douglas and Central."

**MCKAY** "When these were established, the local jurisdictions had the right to say where they wanted them to go. Denver, Colorado stuck theirs up on the mountains."

**KROUT** "I wasn't around then, but I think those were the wrong places to put ours. On Friday and Saturday nights you get all of the cruising and that is when it went off, not on workdays, but on Friday and Saturday nights."

**MEHTA** "In fact the solution, hearing stories from my predecessors, they actually installed barricades so that they wouldn't allow left turns at certain times in the evening on a weekend so that cruising wouldn't happen in a cyclical way. And that took care of the problem."

**MCKAY** "Would we be smart to recommend that we get two or three more and stick them certain places? Because I knew where both of the ones we had today were at. One is in Park City and one is right over here, and they are both on the Interstate. The way the wind is blowing, if you look at them, they are both on the east side of the Interstate. Any wind in the State of Kansas is in that direction most of the time."

**GAROFALO** "Maybe we need to put them on the west side."

**MCKAY** "Well, I am just saying to you that that is where the heavy traffic we have in Wichita is up and down the Canal Route or on I-235. That is where they are both located."

**MEHTA** "To this point, we have covered the more difficult cases where we have to re-examine our existing programs and streamline it for further action. From now on, on Page 14, Item No. 9, just a brief line about more neighborhood plans within the core area. You have already heard presentations of three, maybe four of those and there will be more of those coming out again in the next year."

The next one below that, 'assisting the Health Department in compiling a Natural Resources Atlas. We are talking about an information base which would take into consideration where are the certain natural resource features that might possibly be expanded to other locations such as well sites and hazardous materials.

**MCKAY** "Before you leave there, is No. 9 studies or actual implementation."

**MEHTA** "Actually, there is both, but I am referring to only those new things which I mentioned. The implementation is considered part of an ongoing program. These are new projects, probably 4 or 5 new ones, again this round."

On Page 15, Item No. 3, corridor preservation. This is taken from one of the transportation strategies. The draft transportation plan strategies where you have identified rural arterials. We will draft some procedures or standards for you to look at that will help preserve the travelling capacity of the rural streets.

On the same page, No. 6, access management. This is the unfinished project from the past few years. We will work with City and County Public Works and draft guidelines to help delineate essentially the number and the location of access points along major thoroughfares. That study may also expand to include funding mechanisms on how to pay for off-site improvements if the impact of a particular development application or any project has an impact beyond its site limits.

Page 15, Item No. 7, we will assist the Wichita Transit with Transit Development Program. The draft Transportation Plan already shows a schematic concept of how to redo the transit operation. We will explore that concept further with a transit consultant who will be hired this year and there may be other alternatives to explore as well.

On Page 16, item No. 9, seeking funding sources and coordinating a study of the transportation needs in the southeast quadrant of the Metro area. Notice I am not mentioning the Southeast Bypass or corridor. At this point, we just call it the southeast area and we will do a study. We need to seek funding and we need to coordinate a study."

**MCKAY** "You've got Southeast corridor down there."

**MEHTA** "Then it will be revised."

**GAROFALO** "Take out corridor, put in area."

**MEHTA** "In No. 10, we will assist KDOT. We hope they will ask us to help identify the right-of-way for the Northwest Bypass as part of the Environmental Impact study, which has yet to happen. This is like the Phase II of the northwest MIS. The major study that was concluded last year."

On Item No. 11, we will explore the potential of intermodal freight facility, which primarily means that we do enough research to tell you whether there is a market demand or a need to do that for the Metro area. It is also taking from one of the strategies and the draft transportation plan.

No. 12 is to assist local government to establish passenger rail service through Wichita. There are some efforts already ongoing in the north. The City of Wichita is sending representatives over to work with Amtrak and the Oklahoma Department of Transportation. We will assist as needed to get them information to do that."

**MCKAY** "On No. 12, rather than just to say assist, is there something stronger that we can use, like aggressive go after or something rather than just assist?"

**MEHTA** "To some extent, it may be happening. We, as staff would be providing our staff time in making that happen is what I was intending here. Your strategies in the Comprehensive Plan, I think are already stronger than what I am suggesting."

**MCKAY** "Is this a document that goes to somebody?"

**KROUT** "But it is not for the purpose of stating our objective. It is really for Federal agencies to know what it is that we are going to be doing with our time."

**MEHTA** "On rail banking, we will take every opportunity we can. This is on Page 17. Where there are opportunities, where railroads are declaring abandonment, we will try to preserve the corridors so that we can implement the Parks and Recreation plan."

Then just one more, Mr. Chairman, on Page 22. It is about Wichita Transit, ITS, Intelligent Transportation Systems. We will assist in the deployment of ITS for city, county and state, but specifically, we know that Wichita Transit will be deploying an ITS project in the near future. It has to do with the scheduling of vehicles and pick-up points, using geo-positioning systems with satellites and we will assist in the coordination of that project.

Those are just the new projects. What is going to happen from now on is, unless you have some additional ideas that I can add to the list, we send this to the State and the Feds for their first-round reviews. They will come back with some more suggestions. We will then take it to the Technical Advisory Committee, we take it to a Coordinating Committee on transportation. These are like subcommittees within the umbrella of an MPO. The chairman of the MPO, the MAPC Chair, is also the chair of the coordinating committee on transportation. Then finally, on March 30, we bring it back to you for final vote. That will be your adoption of the Unified Work Program. It will also go to the governing bodies because there is a dollar match element with it and they are the ones who provide that."

**GAROFALO** "Jamsheed, on Page 4, I was just wondering if that list can be put in some sort of chronological order?"

**MEHTA** "You are right, it is all over the place. We will do that."

**GAROFALO** "Then the only other thing I saw was on Page 13, you might want to put in the draft 2030 in the second paragraph. Previous work. Do you suppose we are referring there to the current Comprehensive Plan that we are working on now? Stick 2030 in there."

**KROUT** "Just for clarification, you can just stick 20/30 in there."

**GAROFALO** "Okay, does anybody else have any questions or comments? Thanks Jamsheed."

---

### 13. Other Matters

**KROUT** "A couple of odds and ends. First of all, on your tables, we gave you a blue one-page sheet that has some telephone numbers, fax numbers and a way to contact us by E-mail. It was Commissioner Marnell who asked for that, so we thought that might be helpful to you. Also, if you would like information in the future to possibly be faxed or E-mailed to you and you don't mind giving us your fax or E-mail number, be prepared to bring that to the next meeting, or contact Karen. You can contact her by E-mail if you would like and give us that information. That will just give us another way of contacting you. It might be a faster way for us to get information to you about upcoming meetings, things like that."

Someday, we may actually get to the point where we can actually reduce the amount of paper that we are having to send out."

---

**KROUT** "We should go back to the Annual Report now. If there aren't any other comments, we will ask the chairman to sign the annual report and send it on as corrected. I don't think we need a formal motion on that."

Also, we have gotten now, the minutes from the three public hearings on the Comprehensive Plan, the transcripts, and I just wanted to let you know in advance. If you haven't read them and want to read them, we will put them on the next agenda for your approval of those minutes. So if you have concerns about that may not be in there, and I think Commissioner Wheeler had some concern about some remark she made that wasn't in some of the minutes. Be prepared to give us your comments on those minutes."

The last thing I have is there are two workshops. You got a mailout, I think from Dave Yearout, not from us, about a Saturday workshop on County zoning and Planning Commissioners. We put on your table today, Friday, the day before, that is Friday

March 31, is the conference of the State Planners Association. We are going to talk about Wichita projects basically, the core area and public art and other kinds of issues that are of interest to planners and planning commissioners statewide. Then Dave Yearout's program for County zoning has to do with more legal issues. I got a call from Commissioner Marnell. He is interested in attending the Saturday session. We need to have some sort of a head count. We will pay your way to probably either or both of those conferences and we need to know who is interested."

**WARREN** "Is this the Saturday one that came down through Tim Austin?"

**KROUT** "Right. The Saturday one has to do with legal issues, what you should consider as reasons for rezoning. I think it's a good session for Planning Commissioners to attend if you can. It is \$80 apiece, but if 5 or more people are going, it is \$400, so we could have 10 or 15 people go for \$400. I will probably go ahead and make reservations. We will either call you or I will send out a note for an actual head count. I just had to get an idea if there were some Commissioners who were interested. What about the Friday session? Okay. Take a look at the information on the Friday session and we will be in touch with you to find out if you are interested. That is all that I have. Thank you."

**MOTION:** That the Metropolitan Area Planning Commission adjourn.

**BARFIELD** moved, **WARREN** seconded the motion, and it carried unanimously (11-0).

The meeting officially adjourned at 5:05 p.m.

-----  
State of Kansas        )  
Sedgwick County     ) ss

I, Marvin S. Krout, Secretary of the Wichita-Sedgwick County Metropolitan Area Planning Commission, do hereby certify that the foregoing copy of the minutes of the meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission, held on \_\_\_\_\_, is a true and correct copy of the minutes officially approved by such Commission.

Given under my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 2000.

\_\_\_\_\_  
Marvin S. Krout, Secretary  
Wichita-Sedgwick County Metropolitan  
Area Planning Commission

(SEAL)